

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1909**

**No. 100**

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**THE ORDER OF RAILROAD TELEGRAPHERS,  
ETC., ET AL, PETITIONERS,**

**vs.**

**CHICAGO AND NORTH WESTERN RAILWAY  
COMPANY, a corporation.**

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**ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED JUNE 2, 1909  
CERTIORARI GRANTED OCTOBER 12, 1909**

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**APPENDIX.****DOCKET ENTRIES.**

- 8-20-58 Filed Verified Complaint.
- 8-20-58 Filed Motion for Temporary Restraining Order.
- 8-20-58 Entered Temporary Restraining Order against defendants until August 25, 1958.
- 8-20-58 Plaintiff's Bond filed and approved.
- 8-22-58 Filed Verified Amendment to Complaint.
- 8-22-58 Temporary Restraining Order continued on court's own motion until August 28, 1958.
- 8-25-58 Order entered giving plaintiff leave to amend complaint by changing jurisdictional amount to \$10,000.
- 8-25-58 Defendants' Bond filed and approved.
- 8-25-58 Defendants' Answers to Complaint and Amendment to Complaint filed.
- 8-25-58 through Trial dates before Judge J. Sam Perry.
- 8-27-58
- 8-27-58 Temporary Restraining Order continued to September 6, 1958.
- 9- 5-58 Final arguments heard by court.
- 9- 5-58 Opinion of Court; Temporary Restraining Order continued in effect until September 19, 1958.
- 9- 8-58 Entry of Findings of Fact and Conclusions of Law.
- 9- 8-58 Decree—Defendants enjoined until midnight 9-19-58, plaintiff denied injunctive relief beyond that date and complaint dismissed except as to the relief granted.

*Docket Entries.*

- 9- 8-58 Court refuses to enter proposed findings and conclusions submitted by plaintiff at request of court.
- 9- 8-58 Entry of Injunction pending determination of plaintiff's appeal.
- 9- 9-58 Filed Bond as security pending determination of appeal in the amount of \$50,000.
- 9- 9-58 Defendants' Notice of Appeal filed.
- 9-10-58 Defendants' Amended Notice of Appeal filed.
- 9-12-58 Order vacating portion of defendants' appeal and vacating injunction pending appeal.
- 9-16-58 Notice of Plaintiff's Appeal filed.
- 9-16-58 Entry of injunction pending determination of plaintiff's appeal.
- 9-16-58 Second Amended Notice of Defendants' Appeal filed.

**PREFIX TO RECORD.**

This action was commenced on August 20, 1958 by the plaintiff, Chicago and North Western Railway Company, against The Order of Railroad Telegraphers, a voluntary association; James W. Whitehouse, Vice President of said association; Robert C. Williamson, General Chairman of said association; J. M. Jenks, General Secretary and Treasurer of said association; Renel C. Robertson, Thorwald Larsen and Lawrence W. Nelson, Local Chairmen of said association. On application of plaintiff, a temporary restraining order was entered on August 20, 1958 and continued thereafter from time to time during the proceedings. Evidence was taken on August 25, 26 and 27, 1958 and oral arguments heard on September 5, 1958. On September 8, 1958, after further hearing, the court entered its Findings of Fact and Conclusions of Law and Decree dismissing the complaint and denying all relief except for an injunction prohibiting defendants from striking until after September 19, 1958. On September 16, 1958 the court enjoined defendants from striking until after determination of plaintiff's appeal to this court.

Plaintiff and defendants appealed on September 16, 1958.

*Verified Complaint.*

IN THE UNITED STATES DISTRICT COURT  
 Northern District of Illinois,  
 Eastern Division.

Chicago and North Western Rail-  
 way Company, a corporation,  
*Plaintiff,*

*vs.*

The Order of Railroad Telegra-  
 phers, a voluntary association;  
 James W. Whitehouse, Vice  
 President of said association;  
 Robert C. Williamson, General  
 Chairman of said association;  
 J. M. Jenks, General Secretary  
 and Treasurer of said associa-  
 tion; Reuel C. Robertson, Thor-  
 wald Larsen and Lawrence W.  
 Nelson, Local Chairmen of said  
 association,

*Defendants.*

Civil Action  
 No. 58-C-1538  
 Equitable Relief  
 Demanded.

VERIFIED COMPLAINT.

Plaintiff, Chicago and North Western Railway Com-  
 pany, a corporation, for its complaint against defendants  
 says:

1. This is an action for injunction to restrain and  
 enjoin the calling and carrying out of a wrongful and  
 unlawful strike or work stoppage on plaintiff's railroad.  
 The wrongful acts and unlawful strike threatened by the  
 defendants, as hereinafter described, are designed to in-  
 terrupt commerce and the operation of plaintiff's railroad  
 transportation system, and, if accomplished, will cause  
 damages to plaintiff in excess of \$300,000 in operating  
 revenues each day of the continuance thereof.

2. The jurisdiction of this Court attaches under the Constitution and laws of the United States regulating interstate commerce and the Fifth Amendment to the Constitution of the United States, and is specifically invoked under the Acts of June 25, 1948 (28 U. S. C., Secs. 1331 and 1337); The Railway Labor Act (45 U. S. C., Sec. 1, et seq.); and The Interstate Commerce Act (49 U. S. C. A., Sec. 1 et seq.). The amount in controversy exceeds the sum of \$10,000.00 exclusive of interest and costs. Each of the persons named herein as defendant resides in and is a citizen of the Northern District of Illinois.

3. Plaintiff, Chicago and North Western Railway Company, is a corporation duly organized and existing under the laws of the State of Wisconsin, with its principal place of business at 400 W. Madison Street, Chicago, Illinois.

4. Plaintiff is a common carrier engaged in interstate commerce by railroad, and is a "carrier" within the meaning of that term as defined in the Railway Labor Act, and is subject to the provisions of the Railway Labor Act and the Interstate Commerce Act. Plaintiff owns and operates a railroad system of over 9,000 miles servicing the nine states of Illinois, Wisconsin, Iowa, Minnesota, Michigan, Nebraska, South Dakota, North Dakota and Wyoming. Plaintiff's railroad system is an integral part of the nationwide railway system of the United States, and connects and interchanges freight and passengers with numerous other railroads at many points. Plaintiff carries millions of pieces of mail for the United States of America and continually transports members of the United States military personnel and materials essential to our national defense. Plaintiff serves thousands of industrial plants and business enterprises and transports about one million tons of freight a week and well over 80,000 passengers a day. It employs approximately 18,000 per-

sons and has an investment in its physical properties of about \$475,000,000.

5. Defendant, The Order of Railroad Telegraphers, is a voluntary, unincorporated association and a labor organization which is the duly recognized, certified and acting collective bargaining agent pursuant to the Railway Labor Act for the class of employees working on plaintiff's railroad which is indicated in the title of said organization. Certain individual defendants sued herein are officers of said Association for plaintiff's employees, as indicated in the caption of this complaint. The Order of Railroad Telegraphers and each individual defendant is sued herein ~~individually and as representative of the class of employees represented by said Association.~~ The members of said Association are too numerous to be made individual defendants herein, and it is impractical to bring them before this Court. The persons and organization named as defendants herein, and each of them, have a joint and common interest with, and can, and do, fairly and adequately represent all of the plaintiff's employees in the class of employees for which they are the bargaining agent.

6. Approximately one hundred years ago when the horse and wagon on dirt roads was the common mode of transportation railroad stations were established on the Chicago and North Western Railway System about seven to ten miles apart. The advent of trucks, automobiles, airplanes, barges, pipe lines and modern roads reduced the amount of passenger and freight traffic by railroad and reduced the volume of work performed at many of said stations to the extent in some cases of less than one hour a day during a normal eight-hour day. Pursuant to its duty to provide efficient and economical service to the public, the plaintiff, beginning in November of 1957, filed petitions with the Public Utilities Commissions of South Dakota, Minnesota, Iowa and Wisconsin to institute a Central

Agency Plan whereby certain stations would be made central agencies, which would extend the territories of agents who otherwise have little to do. There were numerous hearings on said petitions and defendants appeared and were represented by counsel at said proceedings.

7. On May 9, 1958, the Public Utilities Commission of South Dakota ordered plaintiff to put the Central Agency Plan into effect in South Dakota and on August 11, 1958, the Iowa State Commerce Commission ordered plaintiff to put the Central Agency Plan into effect in Iowa forthwith. The Central Agency Plan is now in effect in South Dakota and Iowa in accordance with said orders. Defendants have appealed from the order of the Public Utilities Commission of South Dakota. Hearings on plaintiff's petitions in Minnesota and Wisconsin have been concluded and the matters are under advisement by the Commissions in those states.

8. The uninterrupted services of the employees who are members of the defendant organization or represented by them are essential to the operation of the plaintiff railroad, and a strike or work stoppage on plaintiff railroad will cause and continue to cause the plaintiff many thousands of dollars of damage daily, will cause plaintiff to lay off several thousand employees who are not involved in any dispute with plaintiff or represented by the Order of Railroad Telegraphers, and will cause serious, substantial and irreparable damage and interference to plaintiff, to the many industries and railroads served by plaintiff and their employees and customers, to interstate and intrastate commerce, to the carriage of the mails, the national welfare, the public, the Government of the United States and its Armed Forces, and to perishable foodstuffs necessarily carried on plaintiff's railroad.

9. In disregard of the remedies which are available to defendants before the Public Utilities Commission of South Dakota and the Iowa State Commerce Commission and the

right to appeal from the orders of said Commissions, and in disregard of the remedies which are available to defendants before the National Railroad Adjustment Board under the provisions of the Railway Labor Act, the defendants will engage in a strike and work stoppage on the Chicago and North Western Railway Company, the effect of which will stop all of plaintiff's train movements, paralyze plaintiff's transportation system, interrupt interstate and intrastate commerce and plaintiff's operations therein, and prevent the transportation of persons and property by plaintiff both interstate and intrastate. The purpose of said strike and work stoppage and such use of defendants' economic power is to compel plaintiff to repudiate the lawful orders of the said South Dakota and Iowa Commissions and to thereby render said orders null and of no effect, notwithstanding the peaceful and orderly remedies available to defendants under the statutes of the States of South Dakota and Iowa and the Railway Labor Act. A "protest" strike is unlawful and illegal. Plaintiff is without adequate remedy at law and is required to resort to injunctive process to prevent irreparable damage and to maintain the free flow of commerce.

10. Defendants have taken the position, which is denied by plaintiff, that their collective bargaining agreements entered into pursuant to the Railway Labor Act prevent the establishment of the Central Agency Plan and that, for example, any agent whose territory is extended must be paid more than eight hours' wages for each day, even though he may actually work only a mere fraction of that time. Plaintiff has duly performed all the terms and conditions contained in its collective bargaining agreements with the defendants on its part to be performed and will continue to do so. The Railway Labor Act makes it mandatory that such contract disputes be handled by the orderly process there described: first, the labor organization must

handle its grievance with the officers of the railroad in the usual manner and then finally the matter is submitted to the National Railroad Adjustment Board. Defendants have wholly failed to handle their grievance in the manner required by the Railway Labor Act and therefore have no right to strike under the Act. An interruption of commerce or an interruption of the operation of plaintiff's railroad as the result of a work stoppage or strike by defendants before the procedures required by the Railway Labor Act have been exhausted constitutes a violation of the public policy of the United States and the purpose of the Railway Labor Act that railroads and their employees shall exert every reasonable effort to settle all disputes or grievances growing out of the application or interpretation of collective bargaining agreements according to the mandatory procedures set forth in the Railway Labor Act in order "to avoid any interruption to commerce or to the operation of any carrier engaged therein."

11. Subsequent to the filing of the petition with the Public Utilities Commission of South Dakota and subsequent to defendant's maintaining that the Central Agency Plan was not feasible under the collective bargaining agreements above referred to, defendants attempted to change the basic nature of the contract dispute by filing a purported Section 6 notice for a new contract on the same subject. A tardy change in position cannot convert a minor contract dispute into a fully processed major dispute, and defendants cannot thus circumvent the requirements of the Railway Labor Act and deny the public those safeguards against interruptions of service, the establishment of which was the major purpose of the Act. The purported Section 6 notice clearly concerns the same fundamental problem raised by the contract dispute.

12. Defendants on December 23, 1957 requested plaintiff to agree that: "No position in existence on December 3,

1957; will be abolished or discontinued except by agreement between the carrier and the organization." Such a contract would, of course, enable defendants to require the continuation of a station agent even though a state commission had ordered his removal or a change in the number of stations handled by him, and even though the Interstate Commerce Commission had ordered the line abandoned. As there is no termination date on railroad labor contracts, this would freeze for all time the number of station agents and telegraphers regardless of need, technological changes or business conditions.

This request by defendants does not constitute a labor dispute under the Railway Labor Act and is not bargainable. Second, each state in which plaintiff operates has by statute specifically given to its public utility commission the exclusive power to determine whether station agencies may be discontinued. Private parties cannot thwart the power of the public utility commission simply by entering into a contract. Third, the Interstate Commerce Act has imposed certain duties on common carriers to the public which cannot be contracted away.

Under the National Transportation Policy Congress has required common carriers to effect "economical and efficient service" and to "foster sound economic conditions in transportation". Under Section 1(4) of the Interstate Commerce Act the railroads must "provide and furnish transportation upon reasonable requests therefor" and "establish reasonable through routes with other carriers" and also must "provide reasonable facilities for operating such routes". Under Section 1(6) it is the duty of the railroads to "establish, observe, and enforce . . . just and reasonable . . . practices affecting . . . the issuance . . . of receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation . . . and all

other matters relating to or connected with the receiving, handling, transporting, storing and delivering of property." Under Section 1(8) it is the duty of railroads to construct, maintain and operate switch connections with shippers and other railroads, and under Section 1(11) "to furnish safe and adequate car service". The plaintiff will preclude its ability to perform these mandatory duties if it freezes the number of its employees and enters into the contract sought by defendants.

13. On August 18, 1958, the National Mediation Board took jurisdiction and began mediation on August 19 under Docket E175. Under the Railway Labor Act no strike may be engaged in during mediation or during the mandatory 30-day cooling off period following the end of mediation under Section 155 thereof. Defendants have, however, notwithstanding this, given notice that they will begin striking at 6:00 A. M. on August 21, 1958. This will completely paralyze all operations of the plaintiff.

14. Plaintiff has performed all of its obligations under the Railway Labor Act and stands ready to continue to do so.

15. No injury will be done to defendants by the granting of the relief here prayed for because of the matters and things heretofore set forth, as defendants, by pursuing and utilizing the processes set up by law will receive an impartial, final and binding determination concerning the order of the state commissions and the contractual dispute in the manner and form provided by law.

16. This controversy does not involve a labor dispute within the meaning of that term as used in the Norris-LaGuardia Act (29 U. S. C. A. Sec. 101 et seq.) and in any event the threatened acts are unlawful and in violation and defiance of the Railway Labor Act and the other laws hereinbefore mentioned.

17. Said wrongful and unlawful acts of defendants have

and will continue to cause substantial and serious damage to plaintiff in loss of revenues, in unproductive labor costs, in liability for loss and damage claims resulting from delayed and spoiled shipments, and other necessary expenditures incurred by plaintiff during the period of strike and work stoppage, all in excess of \$100,000; and in addition thereto intangible but irreparable damages not capable of measurement.

Wherefore, plaintiff prays that the Court issue a temporary restraining order and preliminary injunction and, ultimately, a permanent injunction in and by which defendants, and members of defendants' organization and all employees of plaintiff whom the defendants represent, and all persons acting in concert or participating with them shall be restrained and enjoined from causing, ordering, authorizing, encouraging, inducing, approving, continuing, starting or permitting any strike, work stoppage or slowdown on plaintiff's railroad; picketing or bannering any of the premises on which plaintiff conducts its railroad operations; interfering with ingress to or egress from said premises; interfering in any manner with the delivery, loading, unloading, dispatch or movement of any of plaintiff's rolling stock, engines, cars, equipment or trains or any of the contents thereof; in any manner interfering with or inducing or endeavoring to induce any person employed by plaintiff from performing his work and duties and from in any manner endeavoring to induce any such employee to desist therefrom in whole or in part; and directing defendants and members of defendant organization and all persons acting in concert or participating with them to take all steps within their power to prevent said threatened strike from occurring or from continuing if commenced. Plaintiff further prays that the Court enter judgment in favor of plaintiff and against the defendants and each of them in the sum of \$100,000 or such other sum as

may be proven, together with interest and costs, and plaintiff further prays for such other and further relief as in equity and in good conscience the Court may deem proper.

Carl McGowan,  
Fred O. Steadry,  
Edgar Vanneman, Jr.,  
R. W. Russell,

*Attorneys for Plaintiff.*

400 West Madison Street,  
Room 1422,  
Chicago 6, Illinois,  
DE 2-2121.

**Affidavit.**

State of Illinois, }  
County of Cook. } ss.

R. W. Heron, being first duly sworn, on oath deposes and says that he is General Superintendent-Transportation of the Chicago and North Western Railway Company, plaintiff; that he has read the foregoing complaint and knows the contents thereof, and that the facts stated therein are true to the best of his knowledge and belief.

R. W. Heron.

Subscribed and sworn to before me this 20th day of August, 1958.

(Seal)

J. E. Krueger,  
*Notary Public.*

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1538) • •

**TEMPORARY RESTRAINING ORDER, NOTICE AND ORDER TO SHOW CAUSE.**

It appearing to the court from the verified complaint herein that a temporary restraining order, preliminary to a hearing on a motion for an injunction, should issue without further notice because defendants and the members of the organization represented by them will strike unless restrained by immediate order of this Court, that immediate and irreparable injury, loss and damage in that event will result to plaintiff and others before notice can be served and hearing had on plaintiff's motion for an injunction;

Now, Therefore, It Is Ordered, That defendants, members of the Order of Railroad Telegraphers, and their agents, servants, employees, officers and attorneys, and all persons employed by plaintiff on its railroad, and any persons acting in concert or participating with them, and any and all persons acting by, with, through or under them or by or through their order, be and they are hereby restrained until the 25th day of August, 1958, at 6:00 o'clock P.M., Central Daylight Saving Time, unless this order be extended beyond said time or dissolved prior thereto from:

1. Calling, ordering, authorizing, encouraging, inducing, approving, continuing, starting or permitting any strike or work stoppage on plaintiff's railroad.

It Is Further Ordered that said defendants, and each of them, take all steps within their power to prevent said threatened strike, work stoppage or slow-down and its continuance if commenced;

It Is Further Ordered that defendants, and each of them, appear before this Court in the United States Court House in the City of Chicago, Illinois, on August 25, 1958, at

11 o'clock A.M., Central Daylight Saving Time, and show cause, if any they have, as to why this restraining order should not be continued or made permanent in accordance with the prayers of the complaint heretofore filed;

It Is Further Ordered that a copy of this notice and order, and a copy of the complaint, be served by F. M. Ellis, K. F. Bourne, J. C. Collins, W. J. Fitzgerald, L. N. Smallwood or by the U. S. Marshal on the defendants forthwith;

And It Is Further Ordered that copies of this notice and order be posted as promptly as may be on the bulletin board at each principal office on plaintiff's railroad system.

This order Issued at 3:30 P. M. o'clock, this 20th day of August, 1958.

J. S. Perry,  
*United States District Judge.*

Chicago, Illinois.

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1538) • •

**ORDER.**

The Court, upon its own motion, and for the purpose of preventing chaos and resulting inconvenience to plaintiffs, defendants and the general public, because of impending arrangements for a proposed strike, does hereby extend the terms and conditions of the restraining order entered herein on August 19, 1958, until 7:00 o'clock A.M. August 28, 1958, in the same manner as if set forth haec verba herein, without prejudice to hearing set herein at 11:00 A.M. August 25, 1958.

Enter:

Joseph Sam Perry,  
*Judge.*

Dated: August 22, 1958.

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1538) • •

**AMENDMENT TO COMPLAINT.**

Pursuant to Rule 15A of the Rules of Civil Procedure, plaintiff herewith files the following amendment to its complaint herein:

12a. By the National Agreement, dated November 1, 1956, between the defendant Brotherhood and the plaintiff and other railroads, the Brotherhood is barred, during the life of that agreement (which remains in effect until October 31, 1959), from presenting a request for a contract provision of the character requested by the defendants. Plaintiff's position in this regard has been communicated to the defendants, and the resulting dispute as to the proper interpretation of the moratorium provisions of the National Agreement has now been submitted by plaintiff to the National Railroad Adjustment Board, the agency which by law has exclusive jurisdiction to determine the issue. The identical issue has also been submitted to said Board by another carrier in another proceeding before the Adjustment Board. Defendants therefore cannot now legally strike over a contract dispute which is before said Board. Defendants' proposal, even if bargainable, is thus barred by the said Agreement of November 1, 1956, and this question has been submitted to the National Railroad Adjustment Board.

12b. The plaintiff entered into an agreement with practically all of the other non-operating brotherhoods on December 27, 1956, providing for supplemental unemployment benefits. The same agreement has been offered the defendant, O. R. T., but has been refused by the O. R. T. Plaintiff hereby reaffirms the availability to the O. R. T. of this

agreement, which has been accepted by brotherhoods which have been much more adversely affected than the O. R. T. by the necessary steps taken by plaintiff to adjust its working forces to the existing service needs.

Carl McGowan,  
Fred O. Steadry,  
Edgar Vanneman, Jr.,  
R. W. Russell,  
*Attorneys for Plaintiff.*

400 West Madison Street,  
Room 1422,  
Chicago 6, Illinois.  
DE 2-2121

**Affidavit.**

State of Illinois, }  
County of Cook. } ss.

R. W. Heron, being first duly sworn, on oath deposes and says that he is General Superintendent-Transportation of the Chicago and North Western Railway Company, plaintiff; that he has read the foregoing Amendment to Complaint and knows the contents thereof, and that the facts stated therein are true to the best of his knowledge and belief.

R. W. Heron.

Subscribed And Sworn to before me this 22nd day of August, 1958.

(Seal)

J. E. Krueger,  
*Notary Public.*

**Mailing Affidavit.**

State of Illinois, }  
County of Cook. } ss.

I, Mary P. Boylen, being first duly sworn, on oath state that I have this 22nd day of August, 1958; mailed a copy of the above Amendment to Complaint by placing a copy thereof in an envelope, with proper postage affixed, addressed to:

Mr. Alex. Elson,  
Mr. Lester P. Schoene,  
Suite 3400—11 South LaSalle Street,  
Chicago 3, Illinois;

Mr. James W. Whitehouse,  
1205 Judson Avenue,  
Evanston, Illinois;

Mr. Robert C. Williamson, and J. M. Jenks,  
Room 1703—400 West Madison Street,  
Chicago 6, Illinois;

Mr. Reuel C. Robertson,  
2694 Joseph Avenue,  
Des Plaines, Illinois;

Mr. Thorwald Larsen,  
696 Thacker Street,  
Des Plaines, Illinois;

Mr. Lawrence W. Nelson,  
c/o Chicago and North Western Railway Company,  
Nelson, Illinois;

in the United States mail chute located at 400 West Madison Street, Chicago, Illinois.

Mary P. Boylen.

Subscribed And Sworn to before me this 22nd day of August, 1958.

(Seal)

J. E. Krueger,  
Notary Public.

IN THE UNITED STATES DISTRICT COURT.  
• • (Caption 58-C-1538) • •

ANSWER OF DEFENDANTS.

Now come The Order of Railroad Telegraphers (hereinafter referred to as "Telegraphers"), James W. Whitehouse, Robert C. Williamson, J. M. Jenks, Reuel C. Robertson, Thorwald Larsen and Lawrence W. Nelson, sued individually and as representatives of the class of employees represented by the Telegraphers, by their attorneys, Alex Elson and Schoene and Kramer, and in answer to the Complaint state:

First Defense.

1. The Complaint fails to state a claim upon which relief can be granted.

Second Defense.

1. This Court is without jurisdiction to grant injunctive relief under the provisions of the Norris-LaGuardia Act (29 U. S. C. Sec. 101 et seq.).

Third Defense.

1. The plaintiff by refusing to negotiate in good faith with the defendant Telegraphers with reference to proposed change in the agreement, notice of which was served upon the plaintiff by the defendant Telegraphers pursuant to Section 6 of the Railway Labor Act (45 U. S. C. Sec. 156), has violated the mandatory requirements of Section 2, First, of the Railway Labor Act (45 U. S. C. Sec. 152, First) in that it has refused to exert every reasonable effort to make or maintain agreements concerning rates

of pay, rules, and working conditions and to settle all disputes in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employes thereof and by reason of this unlawful conduct and other conduct described hereinafter in this Answer; is not entitled to any relief from a court of equity.

#### Fourth Defense.

Defendants answer the Complaint as follows:

1. Defendants admit that this is an action for an injunction. Defendants deny all the remaining allegations of paragraph 1 of the Complaint.

2. Defendants deny the allegations of paragraph 2.

3. Defendants admit the allegations of paragraph 3.

4. Defendants admit that plaintiff is a common carrier engaged in interstate commerce by railroad, and is a "carrier" within the meaning of that term as defined in the Railway Labor Act and is subject to the provisions of the Railway Labor Act and the Interstate Commerce Act. Defendants neither admit nor deny the remaining averments of paragraph 4 and state that they do not have sufficient knowledge of such allegations upon which to form a belief.

5. Defendants admit that the Telegraphers is a voluntary, unincorporated association and a labor organization which is duly recognized, certified and acting collective bargaining agent pursuant to the Railway Labor Act of the class of employees who are working on plaintiff's railroad in the craft commonly described as Station, Tower and Telegraph Employees. Defendants admit that certain individual defendants sued herein are officers of the Telegraphers. Defendant Renel C. Robertson is not now and has not been for sometime an officer of Telegraphers. The remaining allegations of paragraph 5 are denied.

6. The facts leading up to the strike which the plaintiff seeks to enjoin are set forth in paragraphs 7 to 23 of this Answer.

7. On the date of December 23, 1957 defendant Telegraphers served formal notice under provisions of Section 6 of the Railway Labor Act (45 U. S. C. Sec. 156) to amend the current agreement between the Telegraphers and plaintiff railroad by adding a rule reading "No position in existence on December 3, 1957 will be abolished or discontinued except by agreement between the carrier and the organization." A copy of the said notice is hereto attached and made a part hereof as Exhibit 1.

8. Under date of December 24, 1957 plaintiff, acting by its Director of Personnel, T. M. Van Patten, by letter addressed to one of the officers of the Telegraphers, acknowledged receipt of the Section 6 notice. Plaintiff in this letter also took the position that the subject matter of the proposed rule was not a proper subject for a Section 6 notice. The letter suggested a meeting to discuss the matter on January 17, 1958 at 2:00 P. M. A copy of the letter is hereto attached and made a part hereof as Exhibit 2.

9. A meeting was had on January 17, 1958 at the hour of 2:00 P. M. by and between the Director of Personnel of the plaintiff, T. M. Van Patten, and one of the attorneys for plaintiff, and representatives of the Telegraphers. At the meeting the Director of Personnel of the plaintiff reiterated the plaintiff's position taken in the letter of December 24, 1957. The representatives of the Telegraphers took the position that the Section 6 notice was proper under the Railway Labor Act, that the subject was in fact bargainable and that a similar rule was in existence by and between the Railroad Yardmasters of America and a number of railroads. Representatives of the defendant stated that they did not regard the meeting as

one confined to a discussion of the position taken by the plaintiff and asked for a discussion of the merits of the proposal under the procedures of the Railway Labor Act. The plaintiff's representatives refused to discuss the merits of the proposal.

10. Illustrative of the agreements reached by the Railroad Yardmasters of America and referred to in the conference of January 17, 1958 is the following provision of the Mediation agreement between the Railroad Yardmasters of America and Missouri-Kansas-Texas Lines entered into on November 8, 1957:

"(3) Carrier agrees to maintain during period provided in Article III of the Agreement of May 3, 1957, the Yardmaster positions assigned as of the date of this agreement, unless business conditions justify further reductions—in which event the Carrier will negotiate agreement with the Railroad Yardmasters of America before such reductions are effected."

. . . . .

11. Under date of January 21, 1958 plaintiff by its Director of Personnel, T. M. Van Patten, addressed a letter to R. B. Boyington, General Chairman for Telegraphers on the plaintiff's property, referring to the prior correspondence and the conference of January 17th restating the position of the plaintiff previously taken and denying the request for the proposed rule. A copy of this letter is attached hereto and made a part hereof as Exhibit 3.

12. Under date of January 27, 1958 Telegraphers by R. B. Boyington, its General Chairman on the plaintiff railroad, addressed a letter to the Director of Personnel, T. M. Van Patten, for the plaintiff referring to the prior correspondence of the parties restating the position taken at the conference that it was the hope of the representatives of the Telegraphers that through discussion plaintiff's representatives might be persuaded to confer with

the defendants on the merits of the proposal. The letter further stated that inasmuch as the Telegraphers had been unsuccessful in persuading the representatives of the plaintiff to change its position and to secure a conference on the Section 6 proposals of the Railway Labor Act, there was no alternative except to treat the letters of the plaintiff dated December 24, 1957 and January 21, 1958 (Exhibits 2 and 3 attached hereto) as a refusal to confer under the procedure of the Railway Labor Act and that it was the intention of the Telegraphers to progress the Section 6 proposal under the procedure of the Railway Labor Act. A copy of said letter is attached hereto and made a part hereof as Exhibit 4.

13. Under date of February 5, 1958 Telegraphers made application for the Mediation Services of the National Mediation Board. A copy of the letter to the Secretary of the Board from G. E. Leighty, President of Telegraphers, dated February 5, 1958 is attached hereto and made a part hereof as Exhibit 5. A copy of the application for mediation services is also attached hereto and made a part hereof as Exhibit 6.

14. Under date of February 10, 1958 the National Mediation Board by its Executive Secretary addressed a letter to the Director of Personnel of the plaintiff, T. M. Van Patten, advising the plaintiff of the receipt of the application for mediation and the organization's request that the attention of the plaintiff be called to the status quo provision of Section 6 of the Railway Labor Act. A copy of this letter is hereto attached and made a part hereof as Exhibit 7.

15. Under date of February 24, 1958 the National Mediation Board by its Executive Director addressed a letter to the Director of Personnel of the plaintiff, Mr. T. M. Van Patten, and to the President of the Telegraphers, G. E. Leighty, advising that the application filed

by the Telegraphers had been reviewed by the Board, advising further that the Board considered the Section 6 notice served by the organization as proper and that the Board had no alternative except to docket the application, and that the application had been docketed as Case No. A-5696. The letter also inquired whether it was the intention of the Telegraphers to have the application cover both the plaintiff and the former Chicago, St. Paul, Minneapolis and Omaha Railway Company. A copy of this letter of February 24, 1958 is hereto attached and made a part hereof as Exhibit 8. Under date of March 4, 1958 Telegraphers by its President, G. E. Leighty, addressed a letter to the Executive Secretary of the National Mediation Board acknowledging receipt of the letter of February 24th from the National Mediation Board and advising that a separate application for mediation would be filed in connection with the former Chicago, St. Paul, Minneapolis and Omaha Railway and that the Telegraphers were agreeable to having both applications handled concurrently in mediation. A copy of the letter of March 4, 1958 was forwarded to the Director of Personnel of the plaintiff under date of March 7, 1958 by the National Mediation Board. A copy of this letter is attached hereto and made a part hereof as Exhibit 9.

16. Under date of May 21, 1958 the National Mediation Board by telegram to the Director of Personnel of the plaintiff and to G. E. Leighty, President of the Telegraphers, advised that Mediator, Wallace G. Rupp, would be available to commence mediation on May 22, 1958 of Case A-5696 with reference to the rule proposed by the Telegraphers concerning abolition or discontinuance of existing positions and asking to be advised as to who would represent the parties. The Telegraphers by its President, G. E. Leighty, by telegram advised the Mediation Board on the same day that it would be represented

in the mediation proceedings by its Vice President, B. N. Kinkead. The Mediator met with the parties but was unable to persuade the representatives of the plaintiff to discuss the merits of the rule proposed by the Telegraphers and which was the subject of the Section 6 notice hereinabove referred to.

17. Under date of May 27, 1958 W. G. Rupp, the Mediator appointed by the National Mediation Board, addressed a letter to the Director of Personnel of the plaintiff; T. M. Van Patten, and to B. N. Kinkead, Vice President of Telegraphers, advising the parties that he had used his best efforts to bring about an amicable settlement in mediation but had been unsuccessful and in accordance with Section 5 First of the Railway Labor Act, the National Mediation Board requested the plaintiff and the Telegraphers to enter into an agreement to submit the dispute to arbitration as requested under Sections 7 and 8 of the Railway Labor Act. A copy of this letter is hereto attached and made a part hereof as Exhibit 10. Both parties declined arbitration. The declination of arbitration by the plaintiff is contained in a letter under date of June 12, 1958 addressed to Mediator, W. G. Rupp, by the Director of Personnel of the plaintiff railroad. A copy of this letter is hereto attached and made a part hereof as Exhibit 11.

18. Under date of June 16, 1958 the National Mediation Board by its Executive Secretary addressed a letter to the Director of Personnel of the plaintiff, T. M. Van Patten, and to G. E. Leighty, President of the Telegraphers, advising the parties that arbitration had been declined and that in the judgment of the National Mediation Board all practical methods provided in the Railway Act for the adjustment of the dispute by the National Mediation Board had been exhausted without effecting a settlement, and that notice was being served on behalf

of the National Mediation Board that its services (except as provided in Section 5 Third, and in Section 10 of the Railway Labor Act) had been terminated as of June 16, 1958 under the provisions of the Railway Labor Act. A copy of this letter is hereto attached and made a part hereof as Exhibit 12. Under date of June 20, 1958 the Telegraphers by its President, G. E. Leighty, wrote a letter to the National Mediation Board acknowledging its letter of June 16, 1958, a copy of which letter is hereto attached and made a part hereof as Exhibit 13.

19. Under date of July 10, 1958 the Telegraphers submitted to its membership on the plaintiff property a circular and strike ballot seeking the views of the membership as to whether a strike should be authorized if necessary to secure a satisfactory settlement of the dispute arising from the proposal of the Telegraphers to add to the existing agreements with the plaintiff the rule proposed under the Section 6 notice above referred to. A communication accompanying the strike ballot summarized the circumstances, which in the opinion of the officers of the Telegraphers, gave rise to the need for the rule proposed and also setting forth in chronological order certain of the events set forth above. A copy of the circular and strike ballot is hereto attached and made a part hereof as Exhibit 14.

20. A separate Section 6 notice was served on the Chicago, St. Paul, Minneapolis and Omaha Railway asking for a rule change identical with the rule change proposed in the Section 6 notice served by the Telegraphers on the plaintiff. The Chicago, St. Paul, Minneapolis and Omaha Railway Company no longer exists as an operating company, the operation of its railroad properties being carried on by the plaintiff, but the agreement between the Telegraphers and the Chicago, St. Paul, Minneapolis and Omaha Railway Company has been continued in effect by

the plaintiff and governs the relationship between the Telegraphers and the plaintiff as to employees engaged in such operations. The chronology of the handling of the Section 6 notice by the Telegraphers with the Chicago, St. Paul, Minneapolis and Omaha Railway and the actions taken by the plaintiff and the Telegraphers in connection with said notice are identical with the processing of the Section 6 notice served by the Telegraphers on the plaintiff except that the application for mediation was made under date of March 18, 1958 and the case was docketed by the National Mediation Board as Case No. A-5739. Both Case No. A-5739, and case No. A-5696 involving the dispute between the Telegraphers and the plaintiff, were processed together before the National Mediation Board.

21. The vote of the membership of Telegraphers on the strike ballot referred to above was almost unanimous in favor of a strike.

22. Under date of August 18, 1958 a strike call and instructions pertaining to conduct of strike were issued by the Telegraphers to all local chairmen, members and employees represented by the Telegraphers on the plaintiff railway and the Chicago, St. Paul, Minneapolis and Omaha Railway, being the Twin Cities Division of the Chicago North Western Railway to commence on Thursday, August 21, 1958 at 6:00 A. M. Central Standard Time. A copy of the strike call is attached hereto and made a part hereof as Exhibit 15.

23. Under date of August 18, 1958 the National Mediation Board proffered its services on an emergency basis under its emergency docket as Docket No. E 175. On August 20, 1958 by telegram addressed to the Director of Personnel of the plaintiff and to G. E. Leighty, President of the Telegraphers, the National Mediation Board advised that it was concluding its emergency effort and closing its file on Docket E 175 as of August 20, 1958. A

copy of said telegram is hereto attached and made a part hereof as Exhibit 16.

24. From the time of the service of the Section 6 notice to the present date, the plaintiff has refused to discuss with the representatives of defendant Telegraphers the merits of the proposal contained in the Section 6 notice and has at all times failed to bargain in good faith with the defendant as required by the Railway Labor Act.

25. The allegations of paragraphs 6 through 13, inclusive, of the Complaint seek to create the impression that the strike call by the Telegraphers is a strike in protest of certain actions of the Public Utilities Commission of South Dakota and the Iowa State Commerce Commission and that the strike is essentially a strike involving the interpretation or application of the existing agreements between the plaintiff and the Telegraphers, and to mask the real issue which is the failure and refusal of the plaintiff at all times to bargain in good faith with reference to the change proposed by the Telegraphers incorporated in the Section 6 notices served by the Telegraphers on the plaintiff as set forth above and which led to the issuance of the strike call. The allegations of paragraphs 6 to 13 are in the main irrelevant to the issues of this case. The facts set forth in paragraphs 6 to 13 are denied except as to such facts as may be set forth in the allegations of paragraphs 7 to 23 of this Answer and except as follows:

(a) Defendants admit that the plaintiff, beginning in November of 1957, filed petitions with the Public Utilities Commissions in South Dakota, Minnesota, Iowa and Wisconsin for the purpose of abolishing certain positions of employees represented by Telegraphers and enlarging the assignments of others. Defendants further admit that there have been numerous hearings on said petitions and that defend-

ants have been present and were represented by counsel at such hearings.

(b) The allegations of paragraph 7 of the Complaint are substantially correct although irrelevant to the issues of this case. There should be added the fact that both the South Dakota and Iowa Commission disclaimed any jurisdiction over the labor relations of the parties to the litigation and that the order in South Dakota was by divided commission.

(c) The defendants admit the allegations of paragraph 8 that the uninterrupted services of the employees who are members of the Telegraphers or represented by them are essential to the operation of the plaintiff railroad. Defendants neither admit nor deny the remaining averments of paragraph 8 and state that they do not have sufficient knowledge of such allegations to form a belief.

(d) The allegations of paragraph 9 of the Complaint constitute for the most part conclusions of the plaintiff; to the extent that they are allegations of fact they are denied.

(e) Defendants admit, as alleged in paragraph 10 of the answer, that under the collective bargaining agreement of the parties a station agent may not be required to work at more than one station in order to receive a day's pay. Defendants state further, as more fully set forth hereinabove, that the strike, which plaintiff seeks to enjoin, grows out of the failure of the plaintiff to bargain collectively with the Telegraphers and does not arise out of differences of opinion as to the meaning and application of the existing contracts between the plaintiff and Telegraphers.

(f) Defendants admit, as alleged in paragraph 13 of the Complaint, that on August 13, 1958 the National Mediation Board proffered its services on an

emergency basis docketed as E 175, and alleges that, as set forth above, the National Mediation Board terminated its emergency services on August 20, 1958. Defendants deny that the mandatory thirty-day cooling off period referred to in paragraph 13 applies in any way to the defendant but states that should the thirty-day provision have any application, the thirty-day period would have had its inception on June 16, 1958, the date on which the National Mediation Board advised the plaintiff and the Telegraphers that it was terminating its services under the provisions of the Railway Labor Act, as more fully set forth above. The services proffered by the National Mediation Board on August 18, 1958 and withdrawn on August 20, 1958 were of an emergency character and did not affect the time provisions of the Railway Labor Act.

26. Defendants deny paragraphs 14, 15, 16 and 17 of the Complaint.

Alex Elson,

Schoene and Kramer,

By Alex Elson,

*One of the Attorneys for Defendants.*

Alex Elson,

11 South LaSalle St.,  
Chicago, Illinois,

Schoene and Kramer,

1625 K Street N. W.,  
Washington, D. C.

State of Illinois, }  
County of Cook. } ss.

G. E. Leighty, being first duly sworn on oath, deposes and says that he is President of the defendant Telegraphers. Affiant further states that he has read the foregoing Answer and that all of the allegations of the Answer are true in substance and in fact, except as to paragraph 9, and as to the facts alleged in said paragraph affiant is informed and believes that the same are true and states that the same are true upon such information and belief.

G. E. Leighty.

Subscribed and sworn to before me this 23rd day of August, 1958.

(seal)

Aaron S. Wolff,  
*Notary Public.*

*Answer.***Exhibit 1.**

(Letterhead of The Order of Railroad Telegraphers,  
Chicago 6, Illinois.)

December 23, 1957.

Mr. T. M. Van Patten,  
Director of Personnel,  
C. & N. W. Railway Co.,  
400 W. Madison Street,  
Chicago 6, Illinois.

Dear Sir:

Please accept this as a formal notice served under the provisions of the Railway Labor Act, specifically Section 6, of the desire of the General Committee of The Order of Railroad Telegraphers on the Chicago and North Western Railway Company to amend the current agreement by adding a rule reading:

"No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the carrier and the Organization."

Please advise place, time, and date for initial conference.

Your attention is directed to the status quo provisions of the Railway Labor Act, Section 6.

Yours respectfully,

R. B. Boyington,  
*General Chairman.*

RBB:HD.

**Exhibit 2.**

(Letterhead of Chicago and North Western Railway Company, Chicago 6, Illinois.)

December 24, 1957.

File 69-6-39.

Mr. R. B. Boyington,  
1703 Daily News Building,  
400 West Madison Street,  
Chicago 6, Illinois.

Dear Sir:

This will acknowledge receipt of your letter of December 23, 1957 which you asked be accepted as a formal notice served under provisions of the Railway Labor Act, specifically Section 6, to amend the current agreement by adding a rule reading:

"No position in existence on December 3, 1957 will be abolished or discontinued except by agreement between the carrier and the Organization."

It is the position of the carrier that the subject matter of your letter of December 23, 1957 is not a proper subject for a Section 6 notice in that it does not in fact concern rules, rates of pay or working conditions, but instead constitutes an attempt to freeze assignments regardless of the controlling agreement and regardless of the necessity or justification for such assignments. The request therefore goes beyond rates of pay, rules or working conditions as referred to in the Railway Labor Act, but constitutes an attempt to usurp the prerogative of the management and to remove from it the control which it must of necessity have over its operations. It is therefore the position of the carrier that the notice served by you is improper and cannot properly constitute basis for a Section 6 notice.

I have, however, no objection to meeting you to further set forth my position in this matter and therefore without in any way waiving my position that your letter of December 23, 1957 is not a proper Section 6 notice, suggest that we meet to discuss the matter at 2:00 p. m., Friday, January 17, 1958. Unless I hear from you to the contrary I will assume that that time is acceptable to you.

Yours truly,

(Signed) T. M. Van Patten.

Exhibit 3.

(Letterhead of Chicago and North Western Railway Company, Chicago 6, Illinois.)

January 21, 1958.

File 69-6-39.

Mr. R. B. Boyington,  
1703 Daily News Building,  
Chicago 6, Illinois.

Dear Sir:

Please refer to your letter of December 23, 1957 which you asked be accepted as a formal notice served under the provisions of the Railway Labor Act, specifically Section 6, to amend the current agreement by adding a rule reading:

"No position in existence on December 3, 1957 will be abolished or discontinued except by agreement between the carrier and the Organization."

In my letter of December 24, 1957 to you I indicated that it was the position of the carrier that the subject matter of your letter was not a proper subject for a Section 6 notice in that it did not concern rules, rates of pay, or working conditions. When we discussed this matter in conference on January 17, 1958, at which time Mr. B. N. Kinkead of your organization was present, I explained

my position in this respect. My position in effect is that the proposal submitted with your letter does not in any way affect the rules, rates of pay, or working conditions under which an employe works, but is intended as a freezing action which would establish positions for all times regardless of the necessity for such positions or the work, if any, which would be performed by those positions if in existence. In other words, the proposal would not in any way affect the rules under which the employe worked, the rates of pay paid him for the service performed, or the working conditions of the employe but would require that his position be maintained for all time.

It is apparent that the requested rule contained in your letter goes far beyond the subject matter contemplated by the Railway Labor Act, and is not a proper subject for a Section 6 notice under that Act. It is therefore necessary that your request for a rule as indicated in your letter be denied in its entirety.

Yours truly,

(Signed) T. M. Van Patten.

Exhibit 4.

(Letterhead of The Order of Railroad Telegraphers.)

January 27, 1958.

Mr. T. M. Van Patten,  
Director of Personnel,  
C. & N. W. Railway Co.  
400 W. Madison Street,  
Chicago 6, Illinois.

File 69-6-39.

Dear Sir:

This will acknowledge receipt of your letter of January 21, 1958, with respect to our conference on January 17, 1958, concerning the proposal made in my letter of December 23, 1957.

You will recall that Vice President B. N. Kinhead of our organization and I made it clear at the outset that in meeting with you on the date suggested in your letter of December 24, 1957, we were not acquiescing in or accepting your position regarding the proposal as stated in that letter. Rather, we stated, that it was our hope that through discussion we could persuade you to confer with us on the merits of the proposal under the procedures of the Railway Labor Act and then proceed to hold such a conference.

Since, as was apparent in the discussion and as confirmed in your letter of January 21, 1958, we have been unsuccessful in persuading you to change your position and in securing conferences on our proposal under the Railway Labor Act we have no alternative but to treat your letters of December 24, 1957 and January 21, 1958, as a refusal to confer under the procedures of the Act.

It is our intention to progress our proposal of December 23, 1957 under the procedures of the Railway Labor Act.

Yours respectfully,

R. B. Boyington, R.C.W.  
*General Chairman.*

REE:HD.

BCC: Mr. G. E. Leighty, President,  
Mr. G. J. Schueler,  
General Chairman, Div. 71  
512 Fifth Street,  
Hudson, Wisconsin.

## Exhibit 5.

February 5, 1958

Mr. E. C. Thompson, Exec. Secretary  
National Mediation Board

File: MB 356

Seventh Floor  
National Rifle Association Building  
1230 Sixteenth Street, N. W.  
Washington 25, D. C.

Dear Sir:

I enclose in duplicate Form NMB 2 covering formal notice served by The Order of Railroad Telegraphers upon the Chicago and North Western Railway Company for an amendment to the current Agreement by the addition of a rule as set forth in the copies of the formal notice which are attached to Form NMB 2.

The notice upon the Carrier was served on December 23, 1957 and conference was held in the office of the Carrier on January 17, 1958 at which time Carrier representatives were present as were the representatives of the Organization with the Vice President, Mr. B. N. Kinkead in charge of the negotiations for the Organization. Prior to the conference the Carrier representative did, on December 24, 1957, in acknowledging receipt of the formal notice, take the position that the notice was improper under the provisions of the Railway Labor Act. The Organization disputes such to be the case. At the conference on January 17, 1958, the representatives of the Organization set forth that our position in the notice is a proper one to be served under the provisions of the Railway Labor Act and pointed out that mediation settlements have been made covering such items.

On January 21, 1958 the Carrier representative addressed

a communication to the General Chairman of the Organization which I attach to Form NMB 2 for the information of the National Mediation Board and I likewise attach copy of the reply made by the Organization representative, the General Chairman on the property under date of January 27, 1958, for the information of the National Mediation Board.

I trust that the National Mediation Board will see fit to accept immediate jurisdiction of this dispute and if such is done I request that the Board in its advice to the Carrier call attention to the status quo provisions of Section 6 of the Railway Labor Act.

Yours very truly,

G. E. Leighty.

Enclosure

cc: Mr. R. C. Williamson

NDP:em

Exhibit 6.

National Mediation Board

Application for Mediation Services

(File This Application in Duplicate)

To the National Mediation Board,  
Washington, D. C.

MB 356

A dispute has arisen between the parties shown below which has not been adjusted between them, and the services of the National Mediation Board under section 5, First, of the Railway Labor Act, are hereby invoked on the specific question set forth below. The approximate number of employees involved are 1500.

The Specific Question in Dispute.  
(See Item 1 on reverse side)

See attached copy of formal notice served.

(If necessary extend question on additional sheet or  
attach exhibit)

Parties to Dispute.

The Order of Railroad Telegraphers vs. Chicago and  
Northwestern Railway Company.

Working Agreement.

If an agreement governing rates of pay, rules, or working conditions is in effect, give name of parties thereto and date thereof. If there is no such agreement, so state same parties. Date of Agreement—April 1, 1950.

### Compliance with Railway Labor Act.

(See Item 2 on reverse side)

1. If this dispute involves change in the above-mentioned agreement, attached copy of the 30-day notice served by party desiring change and insert date of notice here, December 23, 1957.

2. If this dispute involves the negotiation of a new or supplemental agreement, attach copy of request made by party desiring same and insert date of request here.....

3. If there has been a refusal to confer, so state and give reason; otherwise, give date of last conference here, January 17, 1958.

Signed at St. Louis, Missouri this 5th day of February, 19.....

Name.....	Name.....
(Signature of applicant)	(Signature of applicant)
Title.....	Title.....

Name.....	Name.....
(Signature of applicant)	(Signature of applicant)
Title.....	Title.....

Note—This copy of the National Mediation Board's form of application for mediation is prepared by The Order of Railroad Telegraphers for filing purposes only, and must not be used in communicating with the Board, but is intended for filing copy with the President's office and with officers of the organization.

**Exhibit 6A.**

**(Letter of The Order of Railroad Telegraphers.)**

**December 23, 1957.**

**Mr. T. M. Van Patten,  
Director of Personnel,  
C. & N. W. Railway Co.,  
400 W. Madison Street,  
Chicago 6, Illinois.**

**Dear Sir:**

**Please accept this as a formal notice served under the provisions of the Railway Labor Act, specifically Section 6, of the desire of the General Committee of The Order of Railroad Telegraphers on the Chicago and North Western Railway Company to amend the current agreement by adding a rule reading:**

**"No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the carrier and the Organization."**

**Please advise place, time, and date for initial conference.  
Your attention is directed to the status quo provisions of the Railway Labor Act, Section 6.**

**Yours respectfully,**

**R. B. Boyington,  
General Chairman.**

**RBB:HD.**

## Exhibit 7.

National Mediation Board

Washington

February 10, 1958

Mr. T. M. Van Patten, Director of  
Personnel,  
Chicago & North Western Railway Co.,  
400 West Madison Street,  
Chicago 6, Illinois.

Dear Mr. Van Patten:

The Board is in receipt of an application for mediation from The Order of Railroad Telegraphers covering a dispute between that organization and the Chicago & North Western Railway Co. on the following subject:

"Request for Rule reading:

"No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the carrier and the Organization."

The organization has requested that your attention be called to the status quo provisions, Section 6 of the Railway Labor Act.

Please furnish us promptly with any statement you may care to make on behalf of the company.

Very truly yours,

E. C. Thompson,  
*Executive Secretary.*

cc-to: G. E. Leighty, Pres.,  
The Order of Railroad Telegraphers,  
3860 Lindell Blvd.,  
St. Louis 8, Missouri.

**Exhibit 8.**

**National Mediation Board  
Washington**

**February 24, 1958**

**Case No. A-5696**

**MB 356**

**Mr. T. M. Van Patten, Director of  
Personnel,  
Chicago & North Western Railway Co.,  
400 West Madison Street,  
Chicago 6, Illinois.**

**Mr. G. E. Leighty, President,  
The Order of Railroad Telegraphers,  
3860 Lindell Blvd.,  
St. Louis 8, Missouri.**

**Gentlemen:**

Reference is made to the application filed by the Order of Railroad Telegraphers for the mediation services of the Board in a dispute with the Chicago & North Western Railway Co. on the following subject:

**"Request for Rule reading:**

**"no position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the carrier and the organization."**

This application has been reviewed by the Board. Apparently a proper Section 6 notice has been filed in this matter and accordingly the Board has no alternative except to docket this application. The application has been docketed as case No. A-5696.

It is noted that the carrier makes the following state-

ment in regard to the status quo provisions of the Act regarding this application:

"In your letter you also called attention to the fact that the organizations had called attention to what they called the 'status quo provisions, Section 6 of the Railway Labor Act'. The carrier does not understand that in a case such as the instant case, where there is no rule but only a request for a rule, the service of a Section 6 notice and the status quo provisions can or do result in the carrier being required to operate as if the proposed rule was in fact already negotiated."

Mr. Leighty is requested to advise if this application is intended to cover both the Chicago and North Western Railway Company, including the former Chicago, St. Paul, Minneapolis & Omaha Railway Company or if the application is limited only to the Chicago and North Western Railway Company.

Very truly yours,

E. C. Thompson,  
*Executive Secretary.*

**Exhibit 9.**

**National Mediation Board**

**Washington**

**March 7, 1958**

**Case No A-5696  
MB 356**

**Mr. T. M. Van Patten, Director of  
Personnel,  
Chicago & North Western Railway Co.,  
400 West Madison Street,  
Chicago 6, Illinois.**

**Dear Mr. Van Patten:**

Reference is made to our Case No. A-5696 covering dispute between your carrier and the Order of Railroad Telegraphers.

As a matter of information there is attached hereto copy of letter dated March 4, 1958 from Mr. G. E. Leighty, President of the Order of Railroad Telegraphers, pertaining to the above-mentioned case.

**Very truly yours,**

**E. C. Thompson,  
*Executive Secretary.***

**cc-to: G. E. Leighty, Pres.,  
The Order of Railroad Telegraphers,  
3860 Lindell Blvd.,  
St. Louis 8, Missouri.**

## Exhibit 9 A.

March 4, 1958

File: MB 356

Mr. E. C. Thompson, Exec. Secretary,  
National Mediation Board,  
Seventh Floor,  
National Rifle Association Building,  
1230 Sixteenth Street, N. W.,  
Washington 24, D. C.

Dear Sir:

I acknowledge receipt of my copy of your letter of February 24, 1958 to Director of Personnel Van Patten of the Chicago and North Western Railway Company and me, in which you advise that the National Mediation Board has docketed as its Case A-5696 the application this Organization filed with you on a request for a rule which we desire to negotiate with the Chicago and North Western Railway Company on the following subject:

"No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the carrier and the organization."

While we have asked that the status quo provisions of the Railway Labor Act be called to the attention of the Carrier in this connection and while you have complied with that request, it is noted that you advise that the Carrier desires and takes the position that it does not understand that in a dispute such as this the Section 6 Notice, so far as status quo provisions are concerned, is applicable. Needless to say we do not agree with the Carrier's position in that respect.

You ask that I advise whether this application is intended

to cover also the former Chicago, St. Paul, Minneapolis and Omaha Railway. Since we have another agreement effective on that portion of the Chicago and North Western Railway, we have filed a separate Section 6 Notice covering that portion of the system and will make an application for mediation also separate. However, we will be agreeable that the two be handled concurrently in mediation.

Yours respectfully,

G. E. Leighty.

cc: Mr. R. C. Williamson,  
Mr. G. J. Schueler.

GHS:em

**Exhibit 10.**

**National Mediation Board**

**Washington**

628 S. Catherine Ave.,  
LaGrange, Illinois.

May 27, 1958.

Mr. T. M. Van Patten, Director of  
Personnel,  
Chicago & North Western Railway Co.,  
400 West Madison Street,  
Chicago 6, Illinois.

Mr. B. N. Kinkead, Vice President,  
The Order of Railroad Telegraphers,  
Congress Hotel,  
Chicago, Illinois.

Gentlemen:

On February 5, 1958 the Order of Railroad Telegraphers by its duly authorized representative made application in due form and in accordance to the provisions of the Rail-

way Labor Act for the services of the National Mediation Board in the following dispute.

Case No. A-5696 "No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the carrier and the organization."

This dispute was assigned for mediation to W. G. Rupp and has been the subject of mediation proceedings, without composing the differences. The mediator reports that he has used his best efforts to bring about an amicable settlement through mediation but has been unsuccessful.

In accordance with Section 5, First, of the Railway Labor Act, the National Mediation Board therefore now requests and urges that you enter into an agreement to submit the controversy to arbitration as provided in Section 8 of the Act.

In making your written reply, which is requested at your earliest convenience, please submit it in triplicate so that we may transmit a copy to the other party as advice of your determination in the matter.

Very truly yours,

W. G. Rupp,  
*Mediator.*

**Exhibit 11.**

**Chicago and North Western Railway Company  
400 West Madison Street  
Chicago 6, Illinois**

**June 12, 1958**

**File 69-6-39**

**T. M. Van Patten,  
Director of Personnel.  
H. R. Beisel,  
Assistant Director of Personnel.  
Mr. W. G. Rupp,  
628 South Catherine Avenue,  
La Grange, Illinois.**

**Dear Sir:**

This will acknowledge receipt of your letter of May 27, 1958 addressed jointly to Mr. Kinkead and me on Mediation Case No. A-5696, in which you requested and urged that Mr. Kinkead and I agree to submit this controversy to arbitration under Section 8 of the Railway Labor Act.

As I indicated to the General Chairman of the ORT in my letter of December 24, 1957, and as I indicated in my letter of February 13, 1958 to the Executive Secretary, National Mediation Board, it is the position of the carrier that the purported notice and request of the organization involved in this case does not in fact constitute a proper subject for a Section 6 notice in that the notice does not in fact concern "rates of pay, rules and working conditions, \* \* \*", the subject matter on which carriers and representatives of the employees are required to bargain and reach agreements under the Railway Labor Act, but that on the contrary the purported notice constitutes an attempted usurpation of the prerogatives of management in

determining its requirements of employes in the craft or class represented by the ORT.

In view of the fact that, as indicated in the carrier's position in the two letters referred to, copies of both of which letters you presumably have in your file, it would seem entirely inconsistent for the carrier to agree to submit to arbitration a matter which is not even a proper subject for negotiation under the Railway Labor Act, and your request is therefore respectfully declined.

Yours truly,

T. M. Van Patten.

**Exhibit 12.**

**National Mediation Board  
Washington**

**June 16, 1958**

**Case No. A-5696  
MB 356**

**Mr. T. M. Van Patten, Director of  
Personnel,  
Chicago & North Western Railway Co.,  
400 West Madison Street,  
Chicago 6, Illinois.**

**Mr. G. E. Leighty, President,  
The Order of Railroad Telegraphers,  
3860 Lindell Blvd.,  
St. Louis 8, Missouri.  
Gentlemen:**

We have been advised by Mr. Leighty, President of the organization and Mr. Van Patten, Director of Personnel of the Carrier, in answer to our letter addressed jointly to your respective carrier and organization, under date of May 27, 1958, that the organization and the carrier have

declined, in writing, to arbitrate the question in our Case No. A-5696, as set forth in our letter of February 10, 1958.

Your attention is therefore directed to the last clause in Section 5, First (b) of the Railway Labor Act, as amended, reading as follows:

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose."

It is the judgment of our Board that all practical methods provided in the Railway Labor Act for our adjusting the dispute have been exhausted, without effecting a settlement.

In these circumstances, notice is hereby served in behalf of the Board that its services (except as provided in Section 5, Third, and in Section 10 of the law) have this day been terminated under the provisions of the Railway Labor Act.

We are sending to Mr. Patten a copy of Mr. Leighty's letter dated May 28, 1958 and to Mr. Leighty a copy of Mr. Van Patten's letter dated June 12, 1958.

By order of the National Mediation Board.

Enclosure

E. C. Thompson,  
*Executive Secretary.*

## Exhibit 13.

June 20, 1958

Mr. E. C. Thompson, Executive Secretary,  
National Mediation Board,  
Seventh Floor, National Rifle Association Building,  
1230 Sixteenth Street, N. W.,  
Washington 25, D. C.

File: MB-356  
Case A-5696

Dear Sir:

Permit me to acknowledge receipt of my copy of your letter of June 16 to Mr. T. M. Van Patten, Director of Personnel, Chicago and Northwestern Railway Company and me, informing us that the Mediation Board's efforts to dispose of the dispute covered by the above case number have been unsuccessful, that arbitration was declined, and that you are therefore compelled to close your file.

I appreciate very much the efforts of the National Mediation Board to work out a settlement of the differences between the parties in this dispute.

Yours respectfully,

G. E. Leighty.

GHS:BG

c/c—Mr. R. C. Williamson,  
General Chairman, Division #76,  
1703 Daily News Building,  
400 West Madison Street,  
Chicago 6, Illinois.

b/c—Mr. G. E. Leighty, President,  
c/o Hamilton Hotel,  
Washington, D. C.

## Exhibit 14.

## The Order of Railroad Telegraphers.

Chicago and North Western Railway  
System Division No. 76

R. C. Williamson, General Chairman

J. M. Jenks, General Secretary & Treasurer

1703 Daily News Building

400 West Madison Street

Chicago 6, Illinois

Chicago, St. Paul, Minneapolis & Omaha Railway  
System Division No. 4

G. J. Schueler, General Chairman

512 Fifth Street

Hudson, Wisconsin

H. A. Sauleen, General Secretary & Treasurer

2912 44th Avenue, South

Minneapolis 6, Minnesota

July 10, 1958

To All Members Employed On:

Chicago and North Western Railway

Chicago, St. Paul, Minneapolis & Omaha Railway (Twin  
Cities Division, C. & N. W.)

Greetings:

Since Mr. Ben Heineman and his crowd secured control of the Chicago and North Western Railway System we have all witnessed a revolution in the management of this railroad. All types of service on which the railroad does not have a monopoly have been drastically curtailed with corresponding inhuman slashes in employment in all crafts. The loss of business resulting from curtailed service, in

turn, leads to further reductions in force and further reductions in service, and so the vicious spiral goes on.

Last fall a program of this sort that is of vital concern to our members was initiated by this management. This program is directed at the elimination of the vast majority of agents serving one-man stations. Proceedings were begun before the Public Service Commissions of South Dakota, Minnesota, Iowa and Wisconsin seeking authority either to close nearly all the one-man stations or to have one agent serve two, three or four stations. Similar proceedings in other states may be expected momentarily.

In the public interest, as well as in the interest of our members and the organization as a whole, we have done everything possible to resist this program. Through reliance on the provisions of our Agreements, through informing the residents of the affected communities as to the consequences of the railroad's actions and through attendance at all the hearings of the various commissions and the presentation of evidence and argument, we have tried to make reason, common sense and humanity prevail. Since last November practically all of the time of your General Chairmen and four Vice Presidents as well as much of the time of a number of our Local Chairmen and our General Counsel and of our President has been devoted to these efforts.

However, it became evident at an early date that to meet this onslaught effectively would require strengthening of our Agreements. Accordingly, in December 1957 the General Chairmen, with the approval of President Leighty, served on the management a notice pursuant to Section 6 of the Railway Labor Act proposing to add to our agreements the following rule:

"No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the carrier and the Organization."

The management refused to discuss this proposal on its merits, taking the position that it was not a proper subject for bargaining. Management representatives did meet with the General Chairman and Vice President Kinhead on January 17 but only to reiterate their position that the subject was not proper for bargaining under the Railway Labor Act. We then invoked the mediatory services of the National Mediation Board. That Board took jurisdiction notwithstanding the position of management as to the propriety of bargaining on the subject matter. The Mediation Board exerted its best efforts to obtain a settlement of the dispute but was unsuccessful. The Board notified us and the management on June 16, 1958 that its efforts had failed and that its services were being terminated.

This course of events brings the matter to a point where the members employed on this railroad must decide whether they are willing to stand up and fight for decent conditions or whether they will stand by and let this devastating process continue. We are accordingly submitting this issue to the membership in the form of a strike ballot.

The need for the proposed rule has been becoming more and more clear as time has passed. Recent events in South Dakota leave no doubt about it. The Commission there, on May 9, 1958 by a 2 to 1 vote with Commissioner Merkle dissenting, issued an order purporting to direct the management to put into effect exactly the program the management had proposed. Although during the hearings the management had acknowledged that this could not be done without agreement with our organization, the Commission stated that its order would relieve the carrier of any obligations under our agreement. We did not get a copy of the order until May 15, 1958. On May 14, 1958, before we

even had seen the order, the management sent out telegrams immediately abolishing fifty-three positions and enlarging the assignments of sixteen others of the agents involved in the proceedings.

The Commission's order could not be appealed under the law until a petition for rehearing was acted upon. We promptly filed a petition for rehearing and requested suspension of the order pending action on the petition. Suspension was not granted. The National Mediation Board proffered its services on an emergency basis and requested the Commission temporarily to stay its order and asked the carrier to maintain existing conditions during mediation. Both requests were refused.

We then brought suit against the railroad and the Commission in the Circuit Court at Sioux Falls, South Dakota to enjoin the carrying out of the plan on the ground that the Commission's order was unlawful and the carrier's action under it violated the Railway Labor Act. We got a temporary restraining order but the carrier took the position that the plan was already in effect and went right on forcing the immediately affected employees to exercise their displacement rights and those whom they displaced to do likewise. After a hearing on June 25, 1958 our suit was dismissed on motion of the carrier because the Court concluded that the Commission's order could be challenged only by appeal, even though no appeal could be taken at the time the suit was brought.

In the meantime the Commission denied the petition for rehearing thus making an appeal to the courts available, and we have taken prompt steps to initiate an appeal. But while the appeal is being acted upon we have found no effective means to restore the conditions existing before

the Commission's order. The employes immediately affected have had to exercise seniority if they had sufficient service or to retire or find other employment. Other employes displaced by them have in turn been placed in the same predicament and so on. In wholesale fashion, homes are having to be sold, families disrupted from churches, schools and community lives and new homes having to be established. We must prevent a continuance of such a program.

While we hope the commissions in other states will be more reasonable than the South Dakota Commission, we have no assurance that we will not soon see a repetition in other states of what has happened in South Dakota. In his testimony before the various State Commissions, Mr. Heineman has also said that further reductions are planned in all groups and the only manner in which we can properly protect the employes we represent, through a positive rule in our Agreements such as we have proposed. And the only way such a rule can be secured is by demonstrating our determination through strike action.

We are asking all members employed on this railroad to vote on this critical issue. If as a result of this vote a strike is determined upon pursuant to our Constitution, all members will be expected to join in the strike irrespective of how they voted. There is to be no strike until the date and time are officially set after proper authorization has been secured.

Fraternally yours,

General Committee—Division 4

G. J. Schueler, General Chairman

H. A. Sauleen, General Secretary & Treasurer

L. C. Claxton, Local Chairman

**General Committee—Division 76****R. C. Williamson, General Chairman****J. M. Jenks, General Secretary and Treasurer****G. S. Muto****Thorwald Larsen****R. J. Brick****R. B. Garrigan, Jr.****J. A. Newhouse****W. T. Roberts****J. B. Arends****L. W. Nelson****H. J. Livesey****L. A. Craig****J. F. Winn****J. E. Foreman****C. F. Weber****G. F. Adams****Local Chairmen****Approved:****G. E. Leighty, President**

Official Strike Ballot

Chicago and North Western Railway System  
The Order of Railroad Telegraphers  
System Divisions No. 76 and No. 4

I have carefully read, or heard read, the accompanying circular signed by the members of the General Committees of Divisions No. 76 and No. 4 and approved by the President of The Order of Railroad Telegraphers, and this ballot, and understand the question is that of authorizing the calling of a strike and the fixing of a time therefor, in accordance with the laws of The Order of Railroad Telegraphers, for the purpose of securing an acceptable settlement of a pending dispute, namely:

Proposal to add to existing Agreements the following rule:

"No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the carrier and the Organization."

For A Strike..... ☐

Against A Strike..... ☐

.....  
Signature

.....  
P. O. Address

.....  
Your classification

.....  
R.R. Division on which you work

.....  
O. R. T. Certificate

Detach and vote this ballot and return it to your General Chairman not later than July 31, 1958.

## Exhibit 15.

The Order of Railroad Telegraphers

3860 Lindell Boulevard

St. Louis 8, Mo.

G. E. Leighty  
President

Telephone  
JEfferson 3-8321

August 18, 1958.

Strike Call And Instructions Pertaining To Conduct Of  
Strike.

To All Local Chairmen, Members and Employes

Represented By The Order Of Railroad Telegraphers  
On The Chicago And North Western Railway  
Chicago, St. Paul, Minneapolis & Omaha Railway (Twin  
Cities Division, C. & N. W.)

Dear Sirs and Brothers:

The Issues.

On July 10, 1957, we submitted to the membership on the Chicago & North Western System a strike ballot seeking the views of the membership as to whether a strike should be authorized if necessary to secure a satisfactory settlement of the dispute arising from our proposal to add to existing agreements the following rule:

"No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the Carrier and the Organization."

In the circular we summarized the circumstances giving rise to the urgent need for such a rule. We pointed out the general onslaught of this Carrier on the employment

of the people we represent, and particularly the system-wide, wholesale elimination of agency positions and enlargement of assignments of the remaining agents. We recited the brutal conduct of the carrier in South Dakota in abolishing 53 positions and enlarging the assignments of 16 others, all in one day, before we even had notice of the Order of the South Dakota Commission under which the Carrier purported to act. We also told you of our strenuous, patient, but futile efforts to correct the situation under the Railway Labor Act and in the Courts.

The need for the proposed rule has again been tragically demonstrated in the last few days. What happened in South Dakota was repeated in Iowa, except that this time 70 positions were abolished and 27 assignments enlarged.

The vote on the strike ballot was almost unanimous in favor of a strike. The time has come to act in accordance with that vote.

I am setting a date for your withdrawal from the service of The Chicago and North Western Railway Company and The Chicago, St. Paul, Minneapolis & Omaha Railway (Twin Cities Division, C. & N. W.) and I am issuing the instructions to govern that withdrawal in accordance with the laws of our organization.

#### Time And Date Of Strike.

Acting Pursuant To The Constitution And Laws Of Our Organization, And With The Approval Of Your Committees, A Strike Of The Employees We Represent On The Chicago And North Western Railway And The Chicago, St. Paul, Minneapolis & Omaha Railway (Twin Cities Division, C. & N. W.) Is Hereby Called To Commence On Thursday, August 21, 1958, At 6 A. M. Central Standard Time And 5 A. M. Mountain Standard Time.

**Duties of Employes and Officers in Conduct of Strike—**

In connection with the strike the following instructions are to be observed:

1. No employe in service involved in the strike will perform any service after the hour set to strike.

Those employed at points where joint service is performed for other roads, will on the receipt of this letter notify the proper officers of the carrier whose facilities are joint with the Chicago and North Western Railway and the Chicago, St. Paul, Minneapolis & Omaha Railway (Twin Cities Division, C. & N. W.) that on and after 6 a. m. Central Standard Time and 5 a. m. Mountain Standard Time, August 21, 1958, they will not be on duty, giving the reasons why.

Employes of other railroads, terminals or joint facilities who also perform service for the Chicago and North Western Railway and the Chicago, St. Paul, Minneapolis & Omaha Railway (Twin Cities Division, C. & N. W.) and who are not ordered on strike, will discontinue performing any service for the Chicago and North Western Railway and the Chicago, St. Paul, Minneapolis & Omaha Railway (Twin Cities Division, C. & N. W.).

2. All employes on strike will keep away from the company property except such men as are designated certain duties to be performed in furtherance of this strike by authority of the organization.

3. At various points on the carrier system the organization will arrange for halls for meeting purposes. Consult your Local Chairman or other authorized representative for information as to location of the point at which you are to meet. Immediately after the strike becomes effective all men except those assigned to immediate picket duty will assemble at the designated meeting halls. All strikers will be expected to register and be available for assignment to picket duty.

Only persons on strike and duly accredited representatives of the organization will be permitted to be present in the meeting halls.

4. Detailed daily instructions concerning the conduct of the strike will be given at the meeting halls. All strikers will be required to attend such meetings unless on picket duty or excused by the Chairman of the meeting.

5. Every employe must understand that the laws of the organization must be obeyed. Acts of violence of any nature will not be tolerated by the organization.

6. In the conduct of every strike there are numerous irresponsible persons, not members of the organization, who take occasion to engage in acts of violence and disorderly conduct. Such acts are usually attributed to members of the organization and great care should be taken by all employes to avoid associating with such persons.

7. Some carrier officials or their emissaries may endeavor to coerce or mislead the men by asserting that men at other points have not gone on strike or that they have returned to work. Such statements should be ignored and all strikers should apply to their officers and committeemen for information and be governed accordingly. No employes will return to work until the strike is officially terminated.

8. Employes on picket duty are expressly instructed to grant permission to train and engine service employes to cross picket lines to the extent necessary to bring passenger trains that are en route at the time strike is called to their destination and to bring freight trains that have already left a terminal to their next terminal. We wish to avoid the harm that would be caused to the public by leaving passengers or freight stranded en route at the time strike is called. Employes of classes or crafts other than those on strike are requested to refrain from crossing picket lines except to the extent herein indicated.

9. The Local Chairmen of each Committee will be instructed as to their duties by their General Chairman and Grand Lodge Officers.

10. Special Instructions for Employes in Certain Occupations.

Crossing Watchmen and Drawbridge Tenders. Crossing Watchmen and Drawbridge Tenders will notify their supervisory officers of the fact that they will not perform service subsequent to 6 a. m. Central Standard Time and 5 a. m. Mountain Standard Time, August 21, 1958.

Precautions to be taken. Employes should make every possible effort to deliver any perishable freight they have on hand to the consignee; remit All company cash to the proper official, or designated depository without regard to the regular remittance period, place valuables in the safe or other safe depository, properly secure ticket cases, cut out telegraph and dispatchers' telephone instruments (at points where they are installed) so that through circuits may be protected; set your signal or signals in the manner prescribed or required of an employe going off duty, lock up freight house and ticket office and be sure everything is safe before you leave your station. Take your keys with you and retain them until properly checked out by a duly authorized representative of the railroad.

Agents. Railroad Station Agents who handle express for the Railway Express Agency should make every possible effort to deliver to consignee, all perishable goods which may be on hand, prior to the period the strike becomes operative. Valuable packages which cannot be delivered should be reshipped to some division office of the Express Company for safekeeping. No shipment of perishable, valuable or other important freight should be received just prior to the strike period on account of damage or inconvenience which might be caused by delay. After the strike period arrives, no shipments of any kind

should be received or forwarded, nor should any attention be paid to Route Agents or other officials who may try to induce Agents to transact business of the company.

You should notify the citizens in your locality of the pending strike in order that they may not be unduly inconvenienced thereby and have time to make the necessary arrangements to protect themselves.

All funds due the Express Company should be remitted and receipt taken for the remittance.

**Bond and Indemnity Relations.** Station Agents, cashiers and other bonded employes have the same right to cease their employment and relinquish their responsibilities as all other citizens of the United States. You should, therefore, pay no attention to plausible misstatements which may be made by railroad or express officials who may try to influence you to remain in the service on the grounds that you are bonded and liable. You are not liable under the law for anything that transpires at your station after you cease employment and should either the railroad or the Express Company or any person attempt to work an injury on you, your organization will defend you in the courts or elsewhere without regard to trouble or expense.

**United States Mail.** Railroad employes, required to handle United States mail by the railroads, are not in the Government service and, therefore, no legal obligations rest upon them to perform this service. The railroads have contracts with the Government for the performance of this service, for which they receive payments, while the employes are required by the railroads to handle the mail without payment therefor. When the strike period arrives, you will decline to perform this service in the same manner as all other service.

**Telegraphers, Towermen, Block Operators, and Telephoners.** When the strike period arrives, you should

promptly cease work, cut out telegraph and dispatchers' telephone instruments so that circuits may be protected, set all signals in the manner prescribed or required of an employe going off duty and otherwise perform the functions of closing your office in a way that will insure safety to the public, your fellow employes and the property of the railroad. If train orders are on hand to be delivered at the hour the strike is called you should notify the train dispatcher and unless the orders are cancelled or annulled you must leave your signals in a stop position.

Telegraphers, tower directors, towermen, levermen, block operators and telephoners, whose assignment is scheduled to begin after the strike is on should join other employes and refrain from work.

The Railroad Retirement Board has been advised of this action and will designate representatives for the purpose of your filing for unemployment compensation. Their names and locations will be furnished to you at a later date.

You will keep this circular private; read it carefully and carry out its provisions to the letter so far as it applies to you; see others directly interested and in the event they fail to receive a copy instruct them in accordance with the terms set forth herein. Failure to receive this circular is no excuse for remaining in the service after the strike has been declared. Every employe, member and non-member, is expected to obey the strike order which has been issued and any person remaining in the service after the strike is on will be designated as a strike-breaker.

Clearly defined cases of disloyalty or indifference on the part of any person involved in the strike should be reported to the organization and necessary action, either as to discipline or safety measures, taken at once.

Your officers are convinced that a firm stand at this

time will result in a victory for you in this important situation and have full confidence in your courage and integrity.

Fraternally yours,

G. E. Leighty,

*President.*

C. J. Schueler,

*General Chairman,*

System Division 4,

512 Fifth Street,

Hudson, Wisconsin.

H. A. Sauleen,

*General Sec. Treas.*

System Division 4,

2912 44th Avenue South,

Minneapolis 6, Minnesota.

R. C. Williamson,

*General Chairman,*

System Division 76,

1703 Daily News Building,

400 West Madison Street,

Chicago 6, Illinois,

J. M. Jenks,

*General Sec. Treas.,*

System Division 76,

1703 Daily News Building,

400 West Madison Street,

Chicago 6, Illinois.

**Exhibit 16.****(Form of Western Union Telegram.)****1958 Aug. 20 AM 8 30****CA004 PD—FAX Washington DC 20 850 AME—****G. E. Leighty—****Congress Hotel—**

Re case E—175 C&NW and ORT Mediator reports unable to effect settlement in this case. You are therefore notified NMB is closing its file on E-175 as of this date. Board however stands ready to make its services available in case either party desires further mediation efforts. By direction of National Mediation Board. Joint Van Patten, Leighty, Rupp—

**E C Thompson Exec Secy NMBM****IN THE UNITED STATES DISTRICT COURT.****\* \* (Caption 58-C-1538) \* \*****ANSWER TO AMENDMENT TO COMPLAINT.**

1. The defendants deny the allegations of paragraph 12 (a) of the Amendment to Complaint except that defendants admit that on August 22, 1958 R. C. Williamson, General Chairman of the Telegraphers on the plaintiff's railroad, received the letter, copy of which is attached hereto and made a part hereof as Exhibit A. On the same day R. C. Williamson responded thereto by letter, copy of which is attached hereto and made a part hereof as Exhibit B. Defendants further aver that the plaintiff's belated effort to inject a frivolous claim never heretofore raised is irrelevant to any issue in the dispute involved in the impending strike. For the reasons set forth in said letter

the new issue raised by the plaintiff is not in any event referable to the National Railroad Adjustment Board. A copy of Article VI of the Agreement of November 1, 1956 referred to by the plaintiffs as "the moratorium provisions" is attached hereto and made a part hereof as Exhibit C.

2. The allegations of paragraph 12 (b) of the Amendment to Complaint are irrelevant to any issue in the dispute involved in the impending strike or in this case and require no answer.

Alex Elson,  
Schoene and Kramer,  
By Alex Elson,

*One of the Attorneys for Defendants.*

Alex Elson,  
11 South LaSalle St.,  
Chicago, Illinois,  
Schoene and Kramer,  
1625 K Street N. W.,  
Washington, D. C.

State of Illinois, }  
County of Cook. } ss.

G. E. Leighty, being first duly sworn on oath, deposes and says that he is President of the defendant Telegraphers. Affiant further states that he has read the foregoing Answer to Amendment to Complaint and that all of the allegations of the said Answer are true in substance and in fact.

G. E. Leighty.

Subscribed and sworn to before me this 23rd day of August, 1958.

(seal)

Dawn S. Wolff,  
Notary Public.

**Exhibit A.**

(Letterhead of Chicago and North Western Railway Company, Chicago 6, Illinois.)

August 21, 1958

File 69-6-39

Mr. R. C. Williamson  
1703 Daily News Building  
400 West Madison Street  
Chicago 6, Illinois

Dear Sir:

Please refer to former General Chairman R. B. Boyington's letter of December 23, 1957 serving a formal notice on the Chicago and North Western Railway of the desire of the General Committee of the ORT to amend the current agreement by adding the provision:

"No position in existence on December 3, 1957 will be abolished or discontinued except by agreement between the carrier and the organization."

Even though it is still our position that such provision does not in fact constitute a proper subject for a Section 6 notice on which carriers and representatives of employees are required to exercise every reasonable effort to reach agreements under the Railway Labor Act, it is also our position that your notice of December 23, 1957 is barred under the provisions of Article VI of the agreement effective November 1, 1956 between this and numerous other carriers and the ORT and certain other non-operating railroad labor organizations, with which I am sure you are entirely familiar. Our basis for this position that your notice is barred by Article VI is as outlined in the attached memorandum.

It is therefore our purpose to submit this question to the Third Division, NRAB, for determination.

Yours truly,

/s/ T. M. Van Patten

**Exhibit B.**

(Letterhead of The Order of Railroad Telegraphers,  
Chicago 6, Illinois.)

August 22, 1958

Mr. T. M. Van Patten, Director of Personnel  
Chicago and North Western Railway Company  
400 West Madison Street  
Chicago 6, Illinois

Dear Sir:

This will acknowledge receipt of your letter of August 21, 1958, stating that it is your purpose to submit to the Third Division, National Railroad Adjustment Board a question as to whether our Section 6 notice of December 23, 1957 is barred by Article VI of the Agreement of November 1, 1956.

The Agreement of November 1, 1956 is a Mediation Agreement reached through mediation under the provisions of the Railway Labor Act in Case A-5256. The question you now raise for the first time seeks to raise a controversy over the meaning or application of Article VI of said agreement. In case of any such controversy Section 5, Second of the Railway Labor Act authorizes either party to the agreement to apply to the National Mediation Board for an interpretation of its meaning or application. In docketing the dispute arising under our December 25, 1957 notice the National Mediation Board held that a proper Section 6 notice had been served.

The question you now raise is not referable to the National Railroad Adjustment Board not only because of the specific primary jurisdiction of the National Mediation Board over the interpretation of mediation agreements, but also because it does not fall within the statutory jurisdic-

tion of the Adjustment Board. Section 5, First, (i) of the Railway Labor Act permits reference to the Adjustment Board only of disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions". Article VI of the Agreement of November 1, 1956, although contained in an agreement other parts of which concerns rates of pay, rules or working conditions, does not itself concern rates of pay, rules or working conditions within the meaning of Section 5, First, (i). You have heretofore recognized this to be true and have not handled the question on the property in the usual manner for handling disputes referable to the Adjustment Board as the law requires prior to such disputes being referred to the Board.

Very truly yours,

**Exhibit C.**

**"Article VI—Duration of Agreement.**

"The purpose of this Agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraphs (d) and (e) of this Article, no carrier or organization, party to this Agreement, will serve any notice or progress any pending notice to—

- (a) Increase or decrease rates of pay established by Articles I, II, III and IV of this Agreement.
- (b) Increase or decrease the rate of compensation provided in existing agreements or understandings, or eliminate or establish agreements providing the rate of compensation, covering overtime payments, arbitrary payments, Sunday or holiday payments, time paid for but not worked, or increase or decrease the number of paid holiday or paid vacation days.

- (c) Increase or decrease the amount of payments required to be made by the Agreement of December 21, 1955, and Article V of this Agreement for hospital, medical and surgical benefits for the employees and their dependents.
- (d) This Article VI does not prevent adjustments under normal processes on the individual carriers in the rates of pay of individual positions; correction of inequities as between rates for different individual positions on a particular railroad; or negotiation of rates for new positions or positions where the duties or responsibilities have been or are changed. This Article VI will not debar management and committees on individual railroads from agreeing upon any subject of mutual interest.
- (e) This Article VI does not prevent the progressing of pending notices, the serving of notices and the negotiation of agreements dealing with stabilization of employment, separation allowances or other matters not prohibited by the foregoing provisions of this Article VI."

44

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1538) • •

Wednesday, August 27, 1958.

Present: Honorable J. Sam Perry, District Judge.

This being the day to which this cause was continued for further hearing on plaintiff's motion for a preliminary injunction the parties again come by their attorneys and the hearing proceeds and the Court having now heard all the evidence adduced by the parties and being fully advised it is

Ordered that the temporary restraining order heretofore entered on August 20, 1958, and all its terms and conditions, including the bond, remain in effect until September 6, 1958 at 12 o'clock, midnight, and it is

*Order Extending Restraining Order.*

Further Ordered that simultaneous brief be filed by counsel on or before September 2, 1958 and that this cause be and hereby is set for final argument on September 5, 1958 at 10 o'clock, A. M.

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1538) • •

Friday September 5, 1958.

Present: Honorable J. Sam Perry, District Judge.

This cause this day coming on for further hearing on plaintiff's motion for a preliminary injunction the parties come by their attorneys and the hearing proceeds and the Court having now heard all the arguments of counsel it is

Ordered that the temporary restraining order entered herein be and it hereby is continued in full force and effect until September 19, 1958 at 12 o'clock, midnight, and it is

Further Ordered that the cause be and hereby is continued to September 8, 1958 at 2 o'clock, P. M., for the entry of findings of fact, conclusions of law and final decree.

TRANSCRIPT OF TESTIMONY.

*Colloquy.*

(Portion of Opening Statement of counsel for defendants, Mr. Elson.)

7 "The Court: Did they (The National Mediation Board) find against the plaintiff's contention and find that it was bargainable?"

"Mr. Elson: They did not make such a finding, your Honor. They simply found that the Section 6 notice was properly filed within the Act."

8 "We were confronted with what they regarded—and the evidence will show is a major issue of importance to the life of the organization involved, and in order to decide what to do they took a strike ballot in which they set forth by the accompanying circular all of the facts related to the issue. The membership overwhelmingly voted in favor of strike, and thereupon the strike was called. So that the basic issue is that issue now."

ABSTRACT OF THE TESTIMONY.

22 BEN W. HEINEMAN, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

*Direct Examination.*

My name is Ben W. Heineman. I live at 1126 East 48th Street, Chicago, Illinois. I am the chairman and chief executive officer of the Chicago and North Western Railway. My duties consist of the general supervision of the affairs of the company.

I first assumed the position of chairman of the railroad on April 1, 1956, when Mr. Clyde J. Fitzpatrick,

23 our president, and I took office. Prior to that time I had been chairman of the executive committee and a member of the Board of Directors of the Minneapolis and St. Louis Railway Company for a period of two years. I am a member of the Board of Directors of the Association of American Railroads.

The general subject matter of the hearing today  
24 concerns some agency position questions. There were hearings before State Commissions concerning the central agency plan for the North Western Railroad. I was present and I testified at these hearings. The Order of Railroad Telegraphers was also present. At three hearings they testified through Mr. George Leighty, their president, with Mr. Schoene, their general counsel. At one proceeding in Minnesota their vice president, Mr. Kinhead, and Mr. Shuller, represented them. Not only did Mr.  
25 Leighty testify on the issues at those hearings on behalf of the O. R. T., but also various members of the O. R. T. testified.

I was in court this morning when Mr. Elson said that the North Western Railroad had never at any time been willing to bargain with the O. R. T. We have indicated a willingness to discuss these problems with the O. R. T. As to when I indicated such a willingness, hearings were being held in Madison, Wisconsin, on the Wisconsin station closing case. At that time I was testifying and Mr.

George Leighty, president of the O. R. T. and Mr.  
26 Lester Schoene, their general counsel, were present and representing the union. The date in question was May 26, 1958, after the rule in this case had been requested.

During a five minute recess in the morning, I walked over to Mr. George Leighty and to his general counsel, and I said, "George, I wonder if it would be possible for us to get together in the corridor for a few minutes

at the noon recess?" Mr. Leighty was kind enough to say that he would be glad to do that. At the noon recess Mr. Leighty, Mr. Lester Schoene, their general counsel, and Mr. Fitzpatrick, the president of the North Western Railroad, and I met in the corridor. At that time I said, "George, do you think there is any possibility of our sitting down and working out these station closing matters and the discontinuance of the positions of these station agents?"

Mr. Leighty turned to Mr. Schoene, his general counsel, and said, "Well, what do you think, Lester?" Mr. Schoene said, "I think we are too far apart."

And I said, "Well, that is up to you gentlemen, but I want you to know that my door is always open." We have never heard from them since.

I am familiar with the verified complaint and amended complaint which have been filed in this case. Plaintiff's Exhibit 1 for identification is a system map of the Chicago and North Western Railroad, which is not strictly to scale but correctly portrays the area.

28 (At this point PLAINTIFF'S EXHIBIT 1 was received in evidence.)

The North Western Railroad has 9300 miles of roadway. That does not mean 9300 miles of track, because its track is in the nature of 20,000 miles or more; but much of the roadway is double track and siding, and so forth. It

has 9300 miles of roadway on a single track basis. 29 83,000 passengers are carried on workdays by the North Western Railroad. Saturdays and Sundays that amount drops considerably because of our heavier commuter load. I am not sure of the weekend figures. I would estimate it is in the neighborhood of 5,000 to 10,000 on weekends. It is 83,000 passengers a day on weekdays.

We handle approximately 81,000 to 82,000 suburban commuters in this area on each workday, Monday through Friday, on the North Western System.

30 In the month of August we handled roughly 1,150,000 tons a week of freight. It is seasonal, of course, and we are approaching our peak season.

There are 18,372 employees on the North Western System. Our net investment after reserves for depreciation in physical operating property is approximately \$480,000,000. This does not include cash, materials, investments in nonoperating property and the like. The North Western handles some 30,000 pieces of United States mail a day. I cannot tell with precision the number of plants, factories and other industrial enterprises which we serve, but there are certainly several thousand such plants served by the North Western.

The North Western is the largest switching rail-  
31 road in the Chicago area. By that I mean we have more sidings and serve more companies than any other railroad. Now what this means is that even though other railroads may have the line haul, in case of a strike the industries that we serve in the Chicago area, as the largest switching carrier, would be unable to receive the goods, whether handled by other railroads in line haul or not.

The North Western System has three separate trunk lines from Chicago. One goes directly north up along the lake shore, and with a parallel out up through the Fox River Valley on up to the upper peninsula of Michigan. A second trunk goes northwest through Harvard and on up to Madison, Wisconsin, and so on. A third trunk line goes directly west via Oak Park, DeKalb, and so on,  
32 to Clinton, Iowa, and Omaha. Now, of course, there are parallel lines in South Dakota and Nebraska, in Iowa and elsewhere, but those are the three major trunk lines stemming from Chicago.

Last year we handled about 1,414,000 revenue carloads of freight excluding company freight and empties. We handled many hundreds of thousands of empties for other railroads, which is essential to them.

The layout of the North Western Railroad, as previously described is three trunk lines, and being a major switching carrier in Chicago, also results in the North Western having a number of interchange points with other railroads. An interchange point is where we interchange traffic with other railroads. The North Western has interchange 33 traffic directly with 59 other railroads at some 440 separate cities or points. Now, I don't include in that interchanges for deliveries to such switching carriers as intermediate carriers, such as the Indiana Harbor Belt or the Belt Line, to whom we have delivered traffic. Of course, they fan out to the east. I don't include in that such carriers as the Terminal Railroad of St. Louis, which fans out to the south and southwest, and so on.

34 Because the North Western is such a substantial originating carrier, a strike would have a material effect, obviously, on the traffic that was delivered to the carriers that interchange with the North Western at those points and received by us, because we are such a major terminating carrier, the traffic received by us from them. I have no opinion about the effect of the finances of a strike on these other railroads.

Plainly, we would not carry the 81,000 or 82,000 people a day, and in my opinion, based on my personal knowledge of the commuting situation on the north shore, and northwest side, and the west side of Chicago. The strike would paralyze that area as well as the downtown area and the Loop area.

35 As to whether we would not be able to run any trains so that there would be no service and as to whether we would be paralyzed. My understanding is if the Order of Railroad Telegraphers goes out on strike, that the probabilities are that all of the other Brotherhoods would honor their picket lines, and it is our understanding—and we would prepare on that basis—that the railroad would stop all operations.

The telegraphers or the members of this craft represented by the O. R. T. are station agents, telegraphers, teletoners (that is to say, who use the telephone for the same purpose that telegraph was theretofore used for),

they are interlocking tower men, drawn bridge operators, wire chiefs and other communication facilities.

When I say they are draw bridge operators, The North Western includes bridges over a great many navigable rivers. In Chicago, for example, we operate bridges over the Chicago River. In Milwaukee we operate bridges over the river that comes in there from the harbor. We operate bridges over the Mississippi, and so forth. The draw bridges are manned by members of the O. R. T.

The North Western Railroad serves a grain growing area of our country. As to the consequences on the movement of grain if the North Western were shut down, we are completing the early harvest on the North Western because of our northern territory and moving it into the Fall harvest. This is a peak harvest year. It may indeed set records. It may indeed break all records. Elevators in those areas and farmers are dependent upon the North Western. Many of them are served exclusively by the North Western, and that grain simply could not move.

37 The North Western also serves certain federal and state highway jobs. Some of them are served exclusively. As to the effect on those jobs if service from the North Western were shut off, well, to the extent that they could, I suppose that they would try to divert that traffic primarily to trucks, and to the extent that they could not divert, in my opinion, those jobs might be very difficult, and then they would simply stop.

The North Western also serves certain ore producing parts of our country. The North Western Railroad developed the ore mining of the northern peninsula of Michigan. We had a railroad up there before it was connected

with other portions of our railroad. For over 70 years or more, I guess 90 years, we have had docks on the shores of Lake Michigan and Lake Superior and we haul from the mines to these docks, and the boats come up to these docks, which are operated by the North Western Railroad to take the boatloads of ores to the steel companies. Inevitably this is a brief season because it is closed by the ice. Were this railroad closed by strike, those docks and ore hauling operations would come to an end.

We have 18,372 employees, of whom 1600 are employees of the Order of Railroad Telegraphers. If the strike came off, and the railroad was closed, plainly the 18,372 would be, except for some supervisory employees included in that number, out of work, if they honored the picket lines, and I assume they would. At the present time, the North Western payrolls are approximately \$10,000,000 a month, or, roughly, \$333,000 a day.

39 . As to the revenue loss to the company if it were unable to operate, in the month of August we are projecting revenue of between nineteen and twenty million dollars. July was fractionally under nineteen million dollars. So the revenue loss would be in the neighborhood of \$650,000 a day or nineteen or twenty million dollars a month.

Plainly those shippers who are dependent upon the North Western would divert their traffic. When that is diverted there is always a problem both for the railroad and, of course, for the railroad's employees as to whether or not that traffic can be recaptured. History has been that once diversion takes place, you do not recapture 100 per cent of the diversion.

The North Western is the oldest railroad out of Chicago. It was started with its predecessor company in 1848, or

'46, and in that 112 years or so it alone has never been struck.

41 As to whether the effect of a strike might be to force the North Western Railroad into receivership, well, any time an individual railroad that has been in weak financial condition attempts to take on the strength of national unions in concert, powerfully helped and financed, it is a very dangerous and difficult job. However, history is filled from biblical times down through the Battle of Britain, where the underdog won when they thought they were right. All I can say in answer to the question is that we would do our best.

There is a relationship between the dispute which we have here involved in this proceeding and the physical and financial condition of the North Western when I first took office in 1956.

42 When Mr. Fitzpatrick and I came to the property on April 1, 1956 it was in a very serious condition and it was apparent not only to us but to many people, that very serious surgery was going to have to be performed if the railroad was going to be preserved for the public, for its employees and for its security holders. The railroad had already lost in the first three months some eight million dollars and the costs were continuing at an alarming rate. Cash was so low that Mr. Fitzpatrick and I had serious question as to whether we would be able to meet the payrolls in September.

It had deteriorated from a postwar high. Because of the deterioration of its equipment and roadway, with the accompanying slowdown in trains and services, and deterioration of services, its relationships with its shippers, or with many of its shippers, were seriously  
43 strained, as were its relationships with its suburban commuters and passengers.

Physically we found that the road was still operating

some 260 steam engines, although in our opinion, and primarily in Mr. Fitzpatrick's opinion as the operating man, the road probably had enough Diesels for Dieselization. It had had order cars standing idle all over the railroad, although its shippers at that time were screaming for equipment, and although there was a national shortage. Its right-of-way, even its main line, was in many areas in such a condition that we were simply not competitive on freight schedules, with a declining amount of business to the inevitable detriment of everyone connected with the railroad, both management, labor and the public.

The methods that we were using, both from a railroad operating standpoint and from repair of equipment, repair and maintenance of right-of-way, and from its communications standpoint, were obsolete. It not only did not reflect the best in railroad operation, but, in my opinion, came very close to reflecting the worst in railroad operation.

44 We had points where we repaired cars, rebuilt them, and Mr. Fitzpatrick and I examined them early in April of '56. Men were working in water and in snow on their backs outdoors. We abolished all those points and built a modern, heavy car repair plant at Clinton, Iowa, costing some six million dollars, which is one of the most efficient in the country.

In terms of its right-of-way, it was a pick and shovel railroad. Men were doing work that other railroads had long since eliminated. In our first two winters, we spent a million dollars each to buy modern track equipment so as to enable men to do the kind of work that was being done on our competing railroads.

In the first six weeks that we were on the railroad, Mr. Fitzpatrick succeeded without the addition of any Diesels in Dieselizing the entire railroad, thereby doing things of considerable importance. It abolished the steam loco-

motive with its costly operations, and it was a first step in the saving of our branch lines because the North Western has heavy branch lines, and the elimination of the steam engine and introducing of Diesels reduced the cost of  
45 operation of those branch lines to the point where they gave promise that we would be able to retain them for the rural areas that we serve.

When you talk about physical functions, you are talking about people, and when you talk about obsolete methods of repairing cars, or a pick and shovel method of doing maintenance, or operating steam engines, you are talking about human beings. When we came to this property, inevitably because of the conditions I have described, we found that the North Western was operating with the highest labor ratio, which means the worst ratio of  
47 wage and salary expense to the revenue dollar of any railroad in the United States, bar none, and that it has been operating in that fashion for at least the five years that I personally stuck with it.

We undertook various programs to correct that  
49 condition. We put in effect a modernization program at the Proviso Yard. Other modernization programs  
50 were undertaken concerning rates.

The railroad business today, unlike its prior history as a monopoly, has radically changed and is today one of the most highly competitive businesses in the United States. Railroads are competing with pipelines, with the river, trucks, buses, with airplanes, and with the private automobile and, of course, with each other. It has been our strong opinion that the day of passing on additional costs of inefficient nature in the form of higher rates to our shippers and higher fares to our passengers has long past. The North Western, in particular, and railroads in general must be concerned with constantly increasing their efficiency, eliminating waste and inefficiency wherever found,

to the end that they may reduce rates and thereby improve their share of the competitive market. The North Western has been taking a lead in that respect. Only recently it has been announced that the North Western took the lead in reducing grain rates throughout its territory to a degree not theretofore reduced in history. We have reduced 51 coal rates. We are in the process of reducing rates on a broad front. To do so, however, requires maximum efficiency in the operation of a railroad.

We have undertaken programs concerning the improvement of the suburban service. Unlike many other carriers, the North Western happens to believe and has stated publicly on many occasions that a suburban operation need not be a losing or a hopeless operation. When we came to the property, the equipment was not what we thought it should be. Some of the schedules were not as rapid as we believed they should be. One of the first things we did, as I already indicated, was to Dieselize the suburban service. We have brought in a substantial number of double-deckers, modern, air-conditioned, new coaches, at a very substantial investment. In the last few years we have made an investment in the suburban service of over sixteen million dollars. We have publicly stated that if certain modernization programs of ours are authorized, we intend to invest in the immediate future an additional six million dollars for new double-decker equipment with a view to attracting and retaining the suburban passengers for our services. This involves also the shortening 52 of schedules, and a program of that kind has been announced.

As to the meaning of "IDP", all modernization does not inevitably involve a reduction of jobs. One of the major problems that all railroads face, and the North Western with its obsolete system faced in particular, was methods of locating and knowing from minute to minute or

day to day the location of the more than 1,400,000 cars of revenue freight that we handle in a year. We have undertaken what we are confident is the most complete and modern program of its kind to provide the most modern mechanical communication techniques and methods for knowing the location from day to day, destination, origin and place on the railroad of these freight cars, with a view to being able to advise our shippers at any moment precisely where their car or load may be. This is going to cost us approximately \$1,200,000 a year. In this particular case, however, it actually creates jobs, rather than the immediate dislocation of jobs, and as a matter of fact,

53 happens to create additional jobs for the telegraphers.

That is the organization that is involved in this proceeding.

The condition of the North Western, in my opinion, lies in the critical need for the modernization of the North Western, bringing it into the middle of the Twentieth Century, and to a degree also the modernization of the railroad industry of which we are a part. I emphasize the North Western because it is what I am concerned with, and because we had lagged badly, but essentially it involves the application of modern techniques both within the industry that is known to other railroads, and borrowed from other industries, so as to compete with these other forms of transportation as well as other railroads, and to bring additional business to the railroads so that we can create jobs on a sound basis and not on a featherbedding basis.

54 My statements are in part based on a personal inspection of the physical property. Mr. Fitzpatrick, our president, and I have traveled over our entire system not once, but many times, over much of it, personally visiting the stations, including the one-man stations involved here and so forth.

The change in the manner of transportation and methods

of transportation—the transportation revolution—contributed to the problem of the North Western in particular, because of the nature of the territory it serves. It has been essentially a short-haul railroad, and particularly 55 vulnerable to truck competition. In addition, the major lines parallel the Mississippi, so that it has been particularly vulnerable to river competition. The all-pervasive private automobile, with the highways which have been built to accommodate them, have provided major competition. However, it is my personal view that the railroads fundamentally in certain areas are and can be the most efficient transportation medium known providing the lowest possible rates to the public, provided that we operate them as efficiently as we know how.

As to the effect on the number of employees on the railroad of the programs which we instituted to correct these conditions, when we came to the property on April 1, 1956, there were 26,300 employees. At the last count we had 18,372 employees, so that the North Western today is operating with about 8,000 fewer employees doing the same volume of business, approximately, somewhat less. However, those employees and the remaining employees 56 are today receiving substantially higher compensation, so that although there has been a net reduction of the amount, as I have indicated, there has been by no means a comparable reduction in compensation, and as a matter of fact, the North Western's payrolls as of now, because of wage increases and the like, are some \$16,000,000 a year higher than they would have been had we had this number of men on April 1, 1956. The purpose of our program is not simply to eliminate or cut down the number of employees on the North Western.

57 The objective of the program is to place the North Western in particular in a position where it can compete with other forms of transportation and other rail-

roads who have done this over the past generation, thereby attract more business to the North Western, and thereby presumably provide more jobs, except on a sound and economic basis. As a matter of fact, many of these reductions in personnel are not net reductions in force, because the funds used from the elimination of wasteful practices are transferred to other personnel and other crafts for the laying of additional cross ties which the North Western needs very badly for the rehabilitation and rebuilding of the freight cars which our shippers of the North Western need. So that it is not necessarily a net reduction in force. It is an attempt to root out waste and transfer the dollars into places which will enable the North Western to do a better transportation job at a cheaper price.

As to the situation regarding station agencies in 1956, the North Western is one of the old railroads. It was laid out fundamentally in the '50s, '60s and early '70s of the last century. There were no hard roads; there were no automobiles; there were no telephones. In consequence, the stations were laid out at a distance—the stations which are occupied by the members of this craft, the telegraphers—were laid out at a distance of seven to eight miles apart.

The reason for their being laid out at such a short distance was that it was regarded at the time as approximately the distance that a farmer could carry a load of wheat by horse over dirt roads to the station, or a load of whatever he had, to place on the train and return.

Now there has been a transportation revolution just as thoroughly as there was with the diesel and steam engines. The hard road came in, and what was previously hours became minutes. The automobile had the same effect and the pickup truck. The telephone enabled customers to do business with the stations without the necessity for traveling to the station. The North Western had reduced their

force at many of these stations, but at many of them—I believe there were some five or six hundred of these stations originally when we came, as I recall—they had reduced force to what are known as one-man stations. That is to say stations where only one man was on duty, and obviously the force could not be reduced below one man, even though the work had fallen to considerably below an eight-hour day.

Studies were made at these stations. I might say that the passenger trains had disappeared from many of these stations. Many trains passed the stations at hours when the agent was not on duty because of the requirements of the telegraphers that no agent could report for duty after 9:45 in the morning or whatever the particular hour might be, and the consequence of this was that we were in many instances paying a station agent a full day's pay for twelve minutes' work, fifteen minutes' work, half an hour's work each day, and in certain cases we were paying an agent as much as \$300.00 for every hour worked, whereas at the same time the North Western was starving for funds to put more ties and more equipment and the like into its system.

We formulated a program to meet this problem created by the one-man station agency. That is called the central agency program. As to what that plan was, under the laws of the several states in which we operate, a railroad has no power to close or consolidate a station or withdraw an agency service without the permission of the state public service commission. We formulated a program which in effect recognized the existing technological change in the transportation industry. After careful individual study of each station we established what we call a central area station. If there are four stations in line, or maybe it is five, or maybe it is one in the middle, and in effect extend the periphery or the area or the service area

of the agent at that station, so that he could serve a larger territory, taking into account the hard road, the telephone and the automobile. As a matter of fact, although the original stations were laid out in miles geographically, they were actually laid out from a time standpoint. They were concerned not with miles, but with the length of time it would take to reach the station and return, and what we attempted to do was to bring into the twentieth century, as I have said, the conditions of today, the hard road, the automobile and the telephone, and reflect them in these station operations. So that the net effect of the program was where an agent in a central station could enlarge his territory and serve effectively the people, the shippers, in a larger area, we did so.

Now, we did not close the other stations, and this is a very important point. If you close the stations, you place them in what might be called or what is called your  
62 prepaid tariffs. You deny to your shippers the usefulness of an open station, but we kept and keep those stations or associate stations as they are referred to in our own tariffs, so that the shipper, the customer, at each of these associate stations has, with certain exceptions, and not in connection with carload freight, the same advantages that he would have if the agent were there. Instead of calling the agent four blocks away by telephone, he calls him four miles away and our agent accepts the call on the required basis. Our agents go to the station by automobile, and we pay the mileage on the automobile, and in most cases he does this in a few minutes.

We are required by law to present a program of this sort to the commerce commissions or the public utility commissions of the various states. The North Western presented such petitions in South Dakota, Iowa, Minnesota and Wisconsin.

63 We filed the South Dakota case first on November 5, 1957. We filed the Minnesota case on January 24, 1958 and we also filed the Iowa station case. The commission felt that because of the public interest, the hearing should not be held just in the state capital, and accordingly, in Iowa, for example, hearings were held in Des Moines, the state capital, in Denison, Sioux City, Algoona, Cedar Rapids, and again at Des Moines, consuming 17 days of hearings without regard to oral argument and  
64 the like. In South Dakota hearings were held at Pierre, the capital, at Rapid City and Huron, which were spread throughout the state, and there the hearings consumed 9 days. Those hearings have now been concluded.

An order has been entered by the South Dakota Public Utilities Commission. South Dakota took an unusual step. They entered an order not authorizing us to do what we asked, but finding that this was required in the public interest, and directing us to do it forthwith. That was not prayed for by us. That was apparently and entirely on the Commission's own motion, and that order was entered on May 13, 1958.

65 Plaintiff's Exhibit 2 for identification is a certified copy of the report, order and opinion of the Public Utilities Commission of the State of South Dakota. Exhibit 2-A is a certified copy of a further order and opinion denying rehearing.

I testified in the South Dakota case on December 19. The rule which the telegraphers had requested in this case was served on us on December 19 and 23.

67 (PLAINTIFF'S EXHIBITS 2 and 2-A were received in evidence.)

68 (At this point counsel read two paragraphs at page 10 of the findings of the South Dakota Commission:)

"We find: that the agent's work load as shown by statistics of record at subject stations varies from twelve

minutes per day at Farmer, to two hours per day at Oneida, with an average work load of fifty minutes per station at the sixty-nine subject stations;" "That the maintenance of full-time agency service at all of the subject stations, because of the lack of public need constitutes mismanagement and a dissipation of carrier's revenues which has and will impair its capacity to render adequate rail service to the public at reasonable rates, and that an order be forthwith issued that the proposed central agency plan be effectuated."

The Iowa Commerce Commission hearings have also been concluded. An order was entered in the Iowa hearings on August 11 of this year. That is just two weeks ago today.

70 Plaintiff's Exhibit 3 for identification is a certified copy of the order entered by the Iowa State Commerce Commission on August 11, 1958. That was the order which was entered on the central agency plan proceedings. Our petition was originally filed in that case on January 24, 1958.

(At this point PLAINTIFF'S EXHIBIT 3 for identification was received in evidence.)

71 (At this point counsel read several paragraphs from the findings and order of the Iowa Commission, Plaintiff's Exhibit 3, as follows:)

"We have given serious and thoughtful consideration to all phases of this problem knowing full well that it represents a change of magnitude and what it will have effect on many shippers and users of railroad service. We have also given consideration to the deteriorated financial condition of the railroad. This condition must be recognized. The problem of granting some relief has been before the National Congress. Savings must be made by reducing or eliminating service no longer needed. The case before

72 us is a proposal to reduce agency service to the level of actual need. It is not one of complete discontinuance. It is the intent, according to evidence, to use the resultant savings for betterments and improvements such as the upgrading of branch lines, purchase of new cars, repair of cars, so that they can be furnished to the shipper in better condition for loading and to otherwise better equip the railroad plant so as to insure efficiency, economy, and adequate rail transportation."

"Granting authority to the applicant, numbers 2 and 3 of its prayer to forthwith inaugurate and establish a central agency plan \* \* \*"

73 The positions with which these orders are concerned were filled by employees who belong to the Order of Railroad Telegraphers. Following the entry of the orders in these two states, the North Western Railroad placed the orders in effect as promptly as possible consistent with our contract obligations with the telegraphers. As to what I mean by "consistent with the contract obligations with the telegraphers", we placed the orders in effect promptly paying the men a severance amount.

74 As to what the Order of Railroad Telegraphers did regarding these two orders, in South Dakota they applied for a rehearing before the Public Utilities Commission. Simultaneously, they went into a South Dakota court, the Circuit Court of Minnehaha County, and obtained a restraining order on May 26. That restraining order was dissolved and the injunction proceedings by the Brotherhood dismissed by the court on June 26. That was a general equity proceeding.

South Dakota provides for a statutory appeal from orders of the South Dakota Commission, and on June 30 the Order of Railroad Telegraphers and certain other interested persons filed an appeal under that statute to

the Circuit Court of Minnehaha County, South Dakota, from the order of the South Dakota Commission. That latter proceeding is now pending.

75 As to the Iowa order, that was rendered on August

11. The appeal period is still running so far as I know and no further action has yet been taken. I am informed that the appeal time has not yet expired. We have put the central agency plan into operation in Iowa as well as South Dakota and they are in effect there at the present time. There was no court proceeding in Iowa enjoining or restraining it.

76 The first time at which the North Western had notice of a strike against it by the O. R. T. was last week some time. Plaintiff's Exhibit 4 for identification is a three-sheet telegram directed to Mr. Van Patten, who is our Director of Personnel and the highest officer on our railroad for labor purposes, from E. C. Thompson, Executive Secretary of the National Mediation Board. That

77 telegram is the first notice we had that the strike was being called. The date was August 14.

(PLAINTIFF'S EXHIBIT 4 for identification was admitted into evidence.)

80 (Counsel for plaintiff stated that the Exhibit 4 was being offered not for the truth of Mr. Leighty's allegations, but solely for the purpose of demonstrating the first strike notice which the railroad had. The court stated that counsel was entitled to offer it for that purpose.)

Prior to that time, the North Western had an inkling or suggestion that there might be a strike on the North Western. Plaintiff's Exhibit 5 for identification is a letter to all of the members of the Order of Railroad Telegraphers of the Chicago and North Western Railway

81 and its subsidiary, the Chicago, St. Paul, Minneapolis & Omaha Railway, dated July 10, and circulating a strike ballot. It was directed to the members of the

Brotherhood. I don't know exactly when the Railroad first saw this. It was sent to us by an agent some days later, but within probably a week or so after the date that it bears of July 10. By an "agent", I mean a station agent, a member of the Brotherhood.

82 (At this point PLAINTIFF'S EXHIBIT 5 was received in evidence, not for the purpose of the truth of the statements therein, but for a limited purpose.)

85 (At this point counsel read portions of Exhibit 5, the O. R. T. strike ballot:)

"Last fall a program of this sort that is of vital concern to our members was initiated by this management. The program is directed at the elimination of a vast majority of agents serving one man stations. Proceedings were begun before the Public Service Commissions of South Dakota, Minnesota, Iowa and Wisconsin, seeking authority either to close nearly all the one-man stations or to have one agent service two, three or four stations. Similar proceedings in other states may be expected momentarily."

86 (Counsel then read the proposed rule which was set out at the bottom of the first page of the exhibit:)

"No position in existence on December 3, 1957 will be abolished or discontinued except by agreement between the carrier and the organization."

87 (Counsel then read the following additional paragraph from the exhibit:)

"While we hope the Commissions in other states will be more reasonable than the South Dakota Commission, we have no assurance that we will not soon see a repetition in other states of what has happened in South Dakota. In his testimony before the various State Commissions, Mr. Heineman has also said that further reductions are planned in all groups, and the

88 only manner in which we can properly protect the

employees we represent is through a positive rule in our agreements such as we have proposed. And the only way such a rule can be secured is by demonstrating our determination through strike action."

89 In addition to the strike ballots, parts of which were just read, the North Western came into possession of other documents concerning the possibility of a strike on the North Western. Plaintiff's Exhibit 6 for identification purports to be a communication from the Order of Railroad Telegraphers dated August 18, entitled, "Strike Call and Instructions Pertaining to Conduct  
90 of the Strike". Now here again I don't recall whether the railroad received this on August 18 or 19. It is dated August 18 of this year. It was received very promptly after the date it bears. It was sent to us by one of the agents.

91 (At this point counsel for Plaintiff clarified the purpose for which he was offering Exhibits 5 and 6. He stated that he was offering them to show notice and the dates when the events occurred, and that he was also offering these documents as admissions on the part of the defendants in this case. The court stated that the various documents could also be considered as received in evidence for the purpose of admissions against in-  
92 terest. PLAINTIFF'S EXHIBIT 6 was then received in evidence also on this basis.)

94 (At this point counsel read several paragraphs from Plaintiff's Exhibit 6, The O. R. T. Strike Call:)

95 "Dear Sirs and Brothers:

"The Issues.

"On July 10, 1958 we submitted to the membership of the Chicago & North Western System a strike ballot seeking the views of the membership as to whether

a strike should be authorized, if necessary, to secure a satisfactory settlement of the dispute arising from our proposal to add to existing agreements the following rule:

‘No position in existence on December 3, 1957 will be abolished or discontinued except by agreement between the carrier and the organization.’ ”

96 The Minnesota proceeding on the central agency plan is complete and awaiting decision of the Railroad and Warehouse Commission of the State of Minnesota. In the Wisconsin proceeding, all evidence has been taken, and briefs are yet to be filed, and I don't know whether oral argument is going to be permitted.

97 The proposed rule demanded of the North Western by the defendants was in the notice given under Section 6 of the Railway Labor Act on December 19 with reference to the Omaha Railroad and on December 23 with reference to the North Western Railroad.

The Mediation Board proffered its services, as indicated in Plaintiff's Exhibit 4. In that telegram, the Mediation Board requested a strike date deferment. 98 The Mediation Board at the time also requested that plaintiff here defer action on the State Commission orders. Those orders had already been placed in effect and we could not defer it in Iowa and South Dakota. South Dakota was several months earlier.

99 Plaintiff's Exhibit 7 for identification is a two-sheet telegram dated August 18, 1958 to Mr. Van Patten, Director of Personnel, Chicago and North Western Railway, from Mr. E. C. Thompson, Executive Secretary of the National Mediation Board. This was received by the North Western Railroad on the date it bears. It is part of the regular files and records of the Personnel Department of the railroad.

100 (At this point Plaintiff's Exhibit 7 for identification  
was received in evidence as PLAINTIFF'S EXHIBIT  
7.)

101 (At this point counsel read Plaintiff's Exhibit 7.)

102 After receipt of this telegram the National Mediation Board had further proceedings concerning E-175. The North Western accepted the proffer of services, as did Mr. Leighty. A mediator was appointed by the name of Wallace Rupp. He came to the North Western on August 19 at 2:30 in the afternoon and discussed the matter with our Director of Personnel, left and said that if there was any possibility of working the matter out, the North Western would hear from him before 10:00 o'clock in the morning on August 20. He stated he was going over to see representatives of the Order of Railway Telegraphers, Mr. Leighty, at the Congress Hotel, I believe. We did not hear from the mediator further directly. We did not hear directly from the mediator further.

A further communication was received from the National Mediation Board's Secretary. That communication is Plaintiff's Exhibit No. 8 for identification.

103 (Plaintiff's Exhibit 8 for identification was received in evidence as PLAINTIFF'S EXHIBIT 8.)

(At this point counsel read the telegram Exhibit 8:)

104 (Counsel stated that the telegram was received by the Personnel Department of the C. & N. W. Railroad on August 20, 1956 according to the telegram.)

This telegram was received by the North Western  
105 Railroad. I have personal knowledge of its receipt.

Well, I have personal knowledge of when it was received in the general offices of the Chicago and North Western. I do not have personal knowledge of when it was received in our communications office, which is manned by telegraphers of this craft. The telegram is dated the

19th. It was not delivered from our communications office to the general office until a day later, but I know when it came to the attention of the officers of the railroad, which was on the 20th.

(Exhibit 9 for identification was received in evidence as PLAINTIFF'S EXHIBIT 9.)

106 (At this point counsel read the telegram Exhibit 9, addressed to Mr. Van Patten, Director of Personnel, Chicago and North Western Railway Company, Chicago.)

In response to the statement contained in the telegram received from the National Mediation Board about the possibility of a further proffer of service, the plaintiff North Western Railway Company replied to that telegram. Plaintiff's Exhibit 10 for identification is that telegram.

107 (Plaintiff's Exhibit 10 for identification was received in evidence as PLAINTIFF'S EXHIBIT 10.)

(At this point counsel read the telegram Exhibit 10, which was from Mr. Van Patten to E. C. Thompson, Executive Secretary, National Mediation Board:)

"Your wire date re Case E-175. This carrier stands ready to cooperate with the Mediation Board in connection with this case at all times."

(The date that appears on the telegram is August 20 and the confirmation copy was received by the railroad on August 21.)

109 (At this point counsel asked the witness: "Would you please tell the Court what the North Western's position is regarding this proposed rule?" The Court sustained objection of counsel for defendants to the question.)

Yes, I testified that the O. R. T. had previously requested that rule. The North Western at no time agreed to that rule. As to what our answer was to the Telegraphers' representatives, our Director of Personnel had been authorized to state two things to the telegraphers by Mr. Fitzpatrick or me jointly or severally:

1. That this particular rule was nonbargainable and that this carrier could not possibly, or in my opinion or that of any carrier, could not possibly acquiesce to it.

111 2. He was authorized to communicate to the Telegraphers that it was barred by the moratorium provisions of the agreement of November 1, 1956, and in due course notice was served that it was going to the National Railway Adjustment Board.

The nonbargainability issue was authorized shortly after receipt of the demand for the rule in December, 1957. Although the moratorium situation had been discussed many times, he was authorized to make that communication on Thursday, August 21, 1958.

113 When the December demand was received, the Director of Personnel, who presumably consulted with other departments of the railroad, recommended to Mr. Fitzpatrick and me that that be the response and that it was a proper response, and we acquiesced in it. I would like to modify my previous statement to that extent. I do not know if there is any difference. We adopted the recommendation. We are still responsible.

116 On Thursday, August 21, Mr. Van Patten was authorized to communicate the position of the North Western Railway to the Order of Telegraphers that the rule which they have demanded was barred by the moratorium provisions of the agreement with the non-ops of November 1, 1956.

On Friday morning, August 22, a submission was made of that issue to the National Railway Adjustment Board and we have today, I believe, received a communication from the National Railway Adjustment Board that that submission has been received or filed.

Plaintiff's Exhibit No. 11 for identification is a mimeographed copy of the submission that we made, including the exhibits.

120 To my knowledge, other railroads have submitted the very same question to the National Railway Adjustment Board as is involved in this submission by the

North Western Railroad. An identical demand was  
123 made by the Telegraphers of another railroad. When

I say "Telegraphers", I mean the defendants in this case. There may have been a different freeze date than December 3, 1957. To restate my answer, another carrier has contended an identical demand made upon it with perhaps a different date appearing in it than the demand here, is barred by the moratorium and has been submitted to the National Railway Adjustment Board as an interpretation of an existing agreement, that is, the agreement of November 1, 1956. We learned of that last week. The railroad that I am referring to is the Minneapolis and St. Louis Railroad. The telegraphers have made other demands of other railroads and they are being processed.

I don't know where they are.

124 Plaintiff's Exhibit 12 for identification is the North Western Railroad's carbon copy of a communication dated August 22 from the National Railroad Adjustment Board to Mr. G. E. Leighty, president of The Order of Railroad Telegraphers. This has a stamp on it indi-  
125 cating receipt by the North Western on August 25.

126 (Plaintiff's Exhibit 12 for identification was received in evidence as PLAINTIFF'S EXHIBIT 12.)

(At this point counsel read part of the letter, Exhibit 12:)

"Written notice of intention to file ex parte submission within thirty days of August 22, 1958 has been received from Mr. T. M. Van Patten, director of personnel, Chicago & North Western Railway Company, in dispute involving, briefly and for identification purposes only, the following: 'That the notices served by the Order of Railway Telegraphers on the carrier

dated December 19, 1957 and December 23, 1957, are in contravention of Article VI of the Agreement of November 1, 1956.' "

Now, subsequently to the notice of intention, the submission was actually made.

128 In the Commission proceedings in Iowa and South Dakota, the O. R. T. adopted two positions: They first of all took the position that the men work longer hours than we said they did, and that public convenience and necessity required their continuance. That position the Commission expressly found contrary to their contentions. In addition, they took a position and argued that in any event we couldn't put the central agency plan into effect without their agreement under existing contracts, because they contended that a central agent under existing contracts would have to be paid a day's pay for each agent he relieved.

131 (At this point the Court sustained an objection by defendant's counsel to the previous answer by the witness, but permitted it to stand as an offer of proof under Rule 43.)

133 Steps were taken by the management of the North Western with regular certified, authorized railway unions to modify and ameliorate the economic consequences of lessened railroad employment. Non-operating  
134 brotherhoods, other than the Telegraphers, who proportionately have been affected far greater, enter into an agreement with the North Western which we have characterized as a supplementary unemployment compensation agreement, whereby the North Western cushioned the effect of these programs so far as the non-operating brotherhoods other than the Telegraphers.

(At this point counsel for defendants asked that the portion of the answer which says that the other brotherhoods were affected more than the Telegraphers be stricken

as a conclusion, but the Court ruled that the answer  
135 would stand as the 'witness' opinion.)

That agreement was reduced to writing. It was entered into by the various non-operating brotherhoods which I have described and the North Western Railroad. Plaintiff's Exhibit No. 13, entitled "Memorandum Agreement", is the agreement. It is entitled "Memorandum Agreement" between the Chicago and North Western Railway Company and certain non-operating labor organizations, Supplemental Unemployment Benefits, dated at

Chicago, December 27, 1956, and entered into with the  
136 following organizations: The Brotherhood of Railway

& Steamship Clerks, the International Association of Machinists, the International Brotherhood of Boilermakers, the International Brotherhood of Electrical Workers, the Brotherhood of Railway Carmen of America, the Sheet Metal Workers, the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, the Brotherhood of Maintenance of Way Employees, the Joint Council of Dining car Employees Union, the United Transport Service Employees of America, the American Railway Supervisors' Association, the Railroad Yardmasters of America, and then comparable brotherhoods

for the Omaha. I stated "North Western", but the  
137 contract was both for the North Western and Omaha.

This agreement is still in effect.

The same agreement was offered to the O. R. T., the defendant in this case.

140 In the Fall of 1957, as I recall it, the director of personnel was engaged in conferences with the General Chairmen of the Order of Railroad Telegraphers and the Grand Lodge vice president. At that time he was authorized to state to them that the North Western Railroad was prepared to enter into a supplemental unemployment compensation agreement identical in terms to those

theretofore entered into with the other non-operating brotherhoods.

142 That offer provoked no response from the O. R. T.

They have never accepted this agreement. In the Fall of 1957 it was the position of the railroad that it would extend the identical terms to the O. R. T. It is still our position that we would extend identical terms to the O. R. T. on a retroactive basis to the same date set out in their rule.

143 (Plaintiff's Exhibit No. 13 for identification, the Supplemental Unemployment Benefits Agreement was received in evidence as PLAINTIFF'S EXHIBIT 13.)

144

*Cross-Examination.*

145 You understood my testimony correctly that after the proposed rule of the Order of Railroad Telegraphers was served in December of 1957, I personally participated in making the decision that the Telegraphers should be told that it is not a bargainable subject matter. I was then fully aware of that attitude of the carrier from its inception. That attitude on that particular rule has not been modified, nor in my opinion can it be.

As to the conversation about which I testified to, in Madison in the corridors of the State Office Building on May 26, 1958, I did not indicate a willingness to confer on the merits of that particular rule, but the Order of Railroad

Telegraphers had always made clear in every document  
146 and every statement that they made, that the purpose of this rule was to protect them against state commission action, and what I was offering to do, and was trying to work out some method to cushion the shock to the extent that there was one on the members of the O. R. T., but on this particular rule, no, sir, I was not prepared to discuss it.

As to in what documents they made that clear, the strike ballot of July 10, and in the strike notice, and in a telegram to the Mediation Board, and theretofore in conversations. I am putting my interpretation on documents that are in evidence.

I indicated a willingness to talk about some means of cushioning the incidence of abolition of positions. In my opinion we have always had a responsibility in 147 that direction.

As to whether I indicated any willingness to discuss the maintenance or continued maintenance of positions, well, I have described the conversation. I said the door was open, and that I would be glad to discuss it. I did not make any proposal, as I said, my door was always open to you.

My recollection, Mr. Schoene, is that this conversation took place after I had been on the stand all morning, and my recollection is that it was the noon recess, but it could have been the afternoon recess. My recollection is the noon recess.

The conversation occurred not quite two weeks 148 subsequent to the order of the South Dakota Commission and the carriers' action with reference to it, and approximately three months before the Iowa Commission's action, and our action with reference to that.

As to whether I in any way suggested a willingness to consider modification of the action I had taken in South Dakota, neither you nor Mr. Leighty gave me the opportunity. I asked Mr. Leighty if he was interested in sitting down and trying to work this out and he turned to you and said, "What do you think?" You said, "We are too far apart." And I said, "All right, gentlemen, but I want you to know that my door is always open."

As to what I was referring to when I said "work this out", as a matter of fact, I was more specific. I said

"either on a South Dakota or a system basis". I said that much—either South Dakota or on a system basis.

149 As to whether what I had reference to was confined to the station closing programs and did not include other employees represented by the Order of Railroad Telegraphers, so far as I know, the Order of Railroad Telegraphers is not affected by any program of the North Western Railroad except the station closing at the present time, except favorably through the integrated data processing.

The notice of December, 1957, the proposed rule, would be forever applicable to all employees represented.

As to whether I meant to imply that the conversation at Madison was an offer to negotiate on the merits of the December, 1957, proposals, that conversation was an offer to bargain on the realities underlying the proposal, yes,

150 sir. They are as you have stated the realities to be in your documents, and I might say that Mr. Elson also stated to the Court in that connection that no counter proposals had ever been received, and this was a feeler, and our conversation was designed to draw out further negotiations.

I do not believe that the carrier at any time before the commencement of this lawsuit asserted to the Order of Railroad Telegraphers that the proposal of December, 1957, was contrary to Article VI of the November 1, 1956, agreement. No such assertion was made to the National Mediation Board at any time as the dispute was still on the property. By "dispute", I am referring to the dispute over the rule requested by the O. R. T. which was still on the property. Hence, there was no occasion to specify the grounds. The Mediation Board enters the dispute when there is disagreement over it. The grounds have nothing to do with it. The moment the moratorium becomes relevant is when the dispute is going to leave the property and

is going to be submitted finally and irrevocably to the Adjustment Board, at which time all grounds must be stated; nor were the Telegraphers prejudiced in any way.

151 I believe I am familiar with the procedural requirements for the submission of disputes to a National Railroad Adjustment Board. I am familiar with the requirement of the statute that disputes referable to the Board shall be handled on the property in the regular manner up to and including the highest operating officer of the carrier.

As to whether the dispute as to the applicability of Article 6 of the 1956 agreement to the December, 1957, proposal was ever so handled on the property, it is the position of the carrier that the communication of August 21 to the General Chairman, with copies to Mr. Leighty, was the statement of the position of the carrier with reference to that dispute before it left the property, yes, sir.

152 I am certain that on submissions to the National Railway Adjustment Board, whether by the organization or by the carriers, the grounds are made as complete as possible under the law, because they are finally bound, once the dispute leaves the property. I might say in answer to your question that this may have been unusual in the lateness of the assertion of that position to the Telegraphers, but I might also say that being served on one day, and two days within a week, on one that there was going to be a strike, and the second day that there was going to be a strike, and second that the strike made it also unusual on this property.

As to the language I was referring to when I said that I was familiar with the procedure reading "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes", the dispute was handled in the regular manner, yes, sir.

153 As to whether my testimony is that the letter of August 18 to the General Chairman stating the position of the carrier and stating that it was our purpose to submit it to the National Railroad Adjustment Board, is the usual manner of handling such disputes on the property, that is not the dispute, and that is not the dispute referred to in the act. The dispute is whether or not the carrier will agree to the rule, and that dispute is handled in the regular course. The grounds for the refusal to handle are normally threshed out in conference. This item had been a matter of discussion on the property for some time, but, as I said, we are not either accustomed to getting a strike notice or a strike call in one week, and unusual tactics call for unusual responses.

154 The dispute submitted to the National Railroad Adjustment Board, of course, is whether the particular rule is barred by the moratorium of the November 1 agreement. That is the dispute that we submitted. That was submitted to the organization for the first time on August 21. I have been informed that that case was received and docketed by the Third Division, I may have been in error. I think my testimony went beyond the sub-  
155 mission of the matter to the Adjustment Board. I believe I stated that we had received a letter indicating that it had been received. I think Exhibit 12 is the letter I was referring to. It does not refer to docketing.

156 I am generally familiar with the proceedings in the nature of an injunction suit brought by the O. R. T. in Minnehaha County, South Dakota. The document you have shown me entitled "Return on Order to Show Cause and Motion to Dismiss" appears to be the response filed by the Public Service Commission of South Dakota in that proceeding. I have never read it.

158 (At this point defendants' counsel offered DEFENDANTS' EXHIBIT NO. 17 into evidence and the

exhibit was received in evidence over objections of counsel for plaintiff.)

160 The agreement identified and admitted as Plaintiff's Exhibit 13 was in settlement of a pending dispute. There were various demands by various organizations. I am sure that notices had been served under Section 6 that gave rise to those disputes. I recall one of those  
161 notices. There may have been certain organizations who later asked for the benefits of the agreement, and were given it without ever having filed a Section 6 notice, but the principal organizations or several of them had filed a notice. The agreement grew out of that, and other organizations asked and received the benefits of the agreement, and the demand was for every man separated or furloughed, that we give him one year's severance pay at his last salary for every year in which he had been in the service of the railroad.

As to whether we regarded that as a bargainable subject under the Railway Labor Act, we regarded severance pay as bargainable. That was quite different from your demand.

162 One of the conditions of the agreement is that none of the organizations signatory may progress any stabilization of employment proposal for three years from May 6, 1956, as I recall it. The yardmasters have signified a desire to cancel their participation in the agreement.  
165 Our response was that in view of the provisions of the concluding paragraphs of the agreement, which I believe is in evidence as Exhibit 13, that we could not entertain the request to cancel the agreement.

166 The paragraph of the agreement I was referring to is:

"The purpose of this agreement is to alleviate undue hardship for the interim period, or until the Railroad Unemployment Insurance Act is revised or amended

within that period. Therefore, this agreement is not subject to change or modification during such three-year period."

It is my understanding that the carrier is standing on that provision to refuse to agree to the cancellation of the participation of the Railroad Yardmasters of America.

167 As to whether we have an agreement with the Order of Railroad Telegraphers providing for severance pay or separation allowances, the agreement provides, as I understand it, what notice must be given to the men and what payment made. Now, I do not know that —(the witness was interrupted at this point.) The agreement simply provides that the employee affected is entitled to two days' notice in case of abolition of his position. We did not close them out without notice and pay them the two days' pay in lieu of the notice. What we did was, effective with the order, we enlarged the central area station. As to the men in the associate stations, we notified them and paid them two days' pay in our view in accordance with the agreement. We closed the station and relieved them of work on the same day. We gave them two days' notice and paid them for two days without working.

168 Going back again to the conversation which I testified as having been had with Mr. Leighty in the corridor of the State Office Building in Madison on May 26, 1958, the National Mediation Board was actively handling the dispute on that date. As to whether the mediator had some meetings with the parties on May 26, we would not necessarily know if he held meetings with the other party.

He did not meet with the North Western on that date.

169 He did not meet with the North Western on the previous day. My notes indicate that the mediator met with the North Western on May 22, four days earlier. My definite understanding is that he did not again meet with the North Western. My recollection is that the services

of the Mediation Board were not terminated until June 16.

Arbitration was proffered on May 27 and declined by the organization on May 28, and by the carrier on June 12.

As to who was representing the carrier in the mediation conferences, Mr. Van Patten, our director of personnel, is the top officer of the carrier for that purpose.

Mr. McGowan, our general counsel, was with Mr. Van Patten at that conference. I was not present.

I did not instruct Mr. Van Patten or Mr. McGowan to indicate to the mediator that even though I was not agreeable to bargaining on the specific proposal made by the Order of Railroad Telegraphers, that we would be agreeable to anything on some sort of counter-proposal such as I said I had in mind when I spoke to Mr. Leighty and you in the corridor in Madison. I do not know whether Mr. Van Patten or Mr. McGowan ever gave such indication to the mediator. I do know that on a subsequent occasion they did, but I don't know whether they did on that occasion.

171 They did make such an indication while it was in mediation. That was on August 19 in mediation file E-175, and I am not excluding the prior times. I simply don't know of them. Such an indication was given on August 19 in mediation file E-175.

The North Western Railroad is a member of the Association of Western Railways. It was represented by the Western Carriers' Conference Committee in the negotiation of the November 1, 1956 agreement with the non-operating organizations. I am not familiar with the document on the letterhead of the association dated November 9, 1956 and identified as Circular No. 772-11.

To the best of my knowledge I have never seen the document. As to whether or not I knew that such a paper existed, I did not know whether or not such a paper

173 existed, but I had been informed that there was some such understanding. As a matter of fact, I had been informed that it was oral. As to whether I knew about the understanding described in the document. I had been informed many months later of the understanding, and I was informed that the understandings were oral. I 174 was so informed within the last ten days. I had that information at the time I authorized the submission that is in evidence here as Exhibit No. 11.

175

*Redirect Examination.*

176 Plaintiff's Exhibit 14 for identification is a letter dated August 25, 1958 addressed to Mr. Van Patten, director of personnel of the C. & N. W. Railway Company, from the executive secretary of the Third Division of the National Railroad Adjustment Board. Plaintiff's Exhibit 15 for identification is a letter addressed to Mr. Van Patten from the Third Division of the National Railroad Adjustment Board, dated August 26, 1958. Those letters have been received by the North Western Railroad.

178 (Plaintiff's Exhibit 14 for identification was introduced in evidence as PLAINTIFF'S EXHIBIT 14.)

179 (Plaintiff's Exhibit 15 for identification was received in evidence as PLAINTIFF'S EXHIBIT 15.)

180 (At this point counsel read the following from Plaintiff's Exhibit 15:)

"This is to certify that by letter dated August 22, 1958, the Chicago and North Western Railway Company filed with the Third Division, National Railroad Adjustment Board, fifteen copies of Carriers' Ex Parte submission involving the dispute."

181 As to the question I was asked about whether this proceeding had been submitted or docketed, I confess that the distinction between docketing and submission is something I only learned last night. The submission has

been filed, and I erroneously termed it "docketing". Under their rules they do not "docket" the proceeding until both sides have made their submission. I am correcting the statement I made yesterday. I should have said "filed".

183 I have now available a transcript of the proceedings before the South Dakota and Iowa Commissions.

193 (At this point counsel for defendants objected to the reading by the witness of any of the said transcripts. Counsel for defendants, Mr. Schoene, stated, among other things:

"We have contended, and still maintain, although entirely apart from any issue in this case, that under our existing agreements the railroad has no right to assign an agent to work at several stations in the course of one day for a single day's pay. Now, no claims have been filed or handled on the property over any such controversy.")

194 (Mr. Schoene further stated:

"No grievances have been processed, no claims have been filed, no disputes have been handled on the property over any such difference of opinion, and, of course, none have been submitted to the National Railroad Adjustment Board.")

203 Turning to the transcript of the testimony of Mr. George E. Leighty, president of the O. R. T., given on January 17, 1958, at Rapid City, South Dakota, in

204 the proceedings before the Public Utilities Commission concerning the central agency plan, Mr. Lester Schoene, at page 2019, asked the following questions and Mr. Leighty made the following answers:

"Q. Now, Mr. Leighty, will you just indicate to the Commission the particular rules in Exhibit No. 78, which is the agreement between the North Western and the O.R.T., and in Exhibit 79, which is the agreement  
205 between the Omaha Railroad and the O.R.T., which

are responsible for the condition in which the establishment of this so-called central agency plan would require the agreement with the Order of Railroad Telegraphers.

"A. Insofar as the Chicago and North Western Railway Company is concerned, it is found on page 45 and is headed 'Basic Day in One-Shift Offices'.

"(a) Except as provided in Section (b) of this rule either eight consecutive hours work exclusive of the meal hour, or eight consecutive hours work with no allowance for meals will constitute a day for one-shift positions. An assignment with no allowance for meals may be changed to one including a meal hour, or vice versa, only on issuance of a new time table, and then only as provided in Rule 50'."

"Rule 50 requires that 48 hours' notice be given. 206 Now in addition to that the schedules which comprise one hundred and some odd pages, periodically the carrier furnishes the General Chairman with the list of positions within the scope of the Telegraphers' agreement. There is a provision in the agreement that positions will be classified in accordance with the work, and any agent or operator's position that is established will be placed in the agreement. Now this basic day rule has been interpreted on the property, and by the Adjustment Board on other railroads where the local interpretation was not agreed upon to mean that the basic day of work must be performed at one location."

Now, on page 2022 Mr. Leighty continued:

"On the Omaha Railroad, that is the yellow booklet, we find it on page 41:

"48. Eight consecutive hours, exclusive of the meal period, shall constitute a day's work, ex-

207

cept that where two or more shifts are worked eight consecutive hours with no allowance for meals, shall constitute a day's work. On shifts of eight consecutive hours, time will be allowed in which to eat without reduction in pay when the nature of the work permits.'

208

"Now on page 41, at the bottom of the page, they did have some trouble years ago on the Omaha, on the subject of taking off positions, and with respect to trying to have one man handle two positions. In Rule 47: '47. Regularly assigned employees will receive one day's pay within each twenty-four hours according to position occupied or to which entitled if ready for service and not used or if required on duty less than the required minimum number of hours as per location except on rest days and holidays. This rule shall not apply in cases of reduction of forces, nor where traffic is interrupted or suspended by conditions not within the control of the railway company.' For example, in cases of a washout or something of that kind, and the line is out of commission for a period of time, it is permissible to lay off the regularly assigned employee without paying him his guarantee. That is practically the only application of the exception."

Turning to the transcript of the statements made on June 25, 1958, at Sioux Falls, South Dakota, by Mr. Schoene, general counsel of the O.R.T., before the Circuit Court of Minnehaha County in the case "*Order of Railroad Telegraphers v. The Chicago and North Western Railway Company*", at page 4 of the transcript, Mr. Schoene's argument reads as follows:

"In the proceedings before the Commission on the aforesaid petition, the witnesses for the railroad company testified that the problems to the feasibility

of inaugurating a central agency program lay in the  
209 fact that under the collective bargaining agreements  
with the organization it was not permitted to assign  
an agent to perform service at more than one station  
in a day unless the organization agreed to such an  
assignment, and if such assignment were made with-  
out such agreement, that the agent so assigned would  
be entitled to a day's pay for each station for which  
he rendered service. This testimony correctly stated  
the established interpretation and application of said  
agreements, and this was confirmed by the testimony  
of the president of the organization. Now that para-  
graph in the complaint is controverted by affidavits  
filed by the railroad company in which it is now stated  
that the most the testimony of its representatives be-  
fore the Commission would establish was that the or-  
ganization claimed its contracts so to provide."

At the bottom of page 10 Mr. Schoene, after some other  
argument, said this:

"So the situation which we have or are confronted  
210 with is one in which the railroad, not on account of  
any dispute as to the meaning of application of the  
agreement but by reason of the purported authority  
of the Public Utilities Commission of this state, has  
simply abrogated and treated as a nullity the provi-  
sions of the collective bargaining agreement with this  
organization. Now that, we say, is contrary to the  
provisions of the Railway Labor Act."

Turning to the statement of Mr. Schoene on July  
211 2, 1958, at Des Moines, Iowa, in his argument before  
the Iowa State Commerce Commission concerning the  
central agency program, at page 2622, Mr. Schoene said:

"Now, in these proceedings the carrier has been, I  
think, somewhat reticent about stating what the prob-

lem of feasibility is in putting this central agency plan into effect. In earlier proceedings it had made quite clear that the problem of feasibility revolved around its agreements with the Order of Railroad Telegraphers, and under the existing agreement it was not permitted to assign a telegrapher to work at more than one station in one day without first coming to an amendatory agreement with the Order of Railroad Telegraphers. Apparently the management has now altered its position somewhat in respect to the matter of agreements. Its conduct and attitude would indicate it is prepared to challenge the meaning and application of the agreements as they have been recognized and applied for many years in the past. The fact that it has apparently seen fit to make that challenge, of course, does not dispose of the problem. The Order of Railroad Telegraphers still adheres to the meaning and recognizes the application of these agreements and does not intend lightly to permit this carrier to abrogate and nullify the agreements that have been in effect for many years."

As to whether or not I did in fact change my position, I did not.

213 As to whether at any time in advance of my meeting with Mr. Leighty in Madison, Wisconsin, I talked with anyone and told them that I was going to talk to Mr. Leighty, Mr. McGowan and Mr. Van Patten were to be our conferees with the mediator, which conference took place on May 22, 1958. For perhaps a week or ten days prior to that meeting, we had discussed the feasibility and desirability of my opening up the matter of bargaining on this general problem with Mr. Leighty, and we had agreed that I would open the matter up with Mr. Leighty at the first opportunity, and we assumed that the first opportunity would be Madison at the hearings, because

Mr. Leighty had been in attendance at all of the hearings other than the Minnesota meeting.

214 From a factual, actual operating standpoint, the North Western Railroad cannot adopt the rule for which the O. R. T. is contending and carry out the order of the South Dakota Commission.

215 (The Court sustained an objection to this answer but the Court permitted the question and answer to stand as an offer of proof under Rule 43.)

From a practical, factual operating standpoint, the North Western Railway Company could not accept the rule contended for by the O. R. T. and furnish reasonable and adequate transportation facilities.

(The Court sustained an objection to the answer by defendants but the Court permitted the question and answer to stand as an offer of proof under Rule 43.)

216 If the rule were accepted, the North Western could not furnish adequate car service.

(Counsel for defendants objected to the answer but the Court permitted the question and answer to stand as an offer of proof under Rule 43.)

As to whether the rule could be accepted by the North Western and carry out other Commission orders both now in existence and as may be in the future entered by State Commissions, well, I can't quite answer that because presumably the Commission could make some future orders which would have nothing to do with the subject matter at all, so I can't answer that question.

217 As to whether we have ever received any lesser demand from the Brotherhood than the rule which they are requesting which has been set out in the exhibits, the organization has never indicated to the North Western Railroad, directly or indirectly, that it would accept anything less than the rule that it is demanding here.

As to whether or not it is true that my door is always

open as I testified yesterday that I had advised Mr. Leighty, that is still true.

218 If the rule contended for here by the Brotherhood were accepted by the Railroad, the North Western Railroad would not be able to comply with Commission orders permitting or directing line abandonments, and we just had one.

(Counsel for defendants objected to the answer but the Court permitted the question and answer to stand as an offer of proof under Rule 43.)

219 G. E. LEIGHTY, called as a witness on behalf of the defendants herein, having been first duly sworn, was examined and testified as follows:

*Direct Examination.*

My name is G. E. Leighty. My address is 3860 Lindell Boulevard, St. Louis 8, Missouri. I am president of The Order of Railroad Telegraphers. That is the chief executive office of that organization. It is part of the responsibility of that office to approve or disapprove of proposed contract revisions that various system committees may wish to negotiate or propose.

220 On or shortly prior to December 23, 1957 I approved a proposed contract revision which the general chairman of the Chicago and North Western Railway wished to serve on that property. At approximately the same time, I approved an identical proposal which the union chairman on the Omaha Railroad wished to serve on the North Western management. Defendants' Exhibit 1 for identification is a duplicate original of that notice so approved by me, bearing the signature of the general chairman. It indicates that it was received by the Chicago

and North Western Railway Company on December 23, 1957.

221-223 (Defendants' Exhibit 1 for identification was received in evidence as DEFENDANTS' EXHIBIT 1 and read.)

As to what, if anything, had occurred on the Chicago and North Western Railroad prior to the serving of 224 this notice which caused me to approve the service of such a proposal, there has been a change in the management of the Chicago and North Western System. There had been a general slaughter of positions. I mean of jobs. There had also been a consolidation between Omaha and the North Western. Our organization had lost a number of jobs already.

225 The incidents or occurrences that I have described extend to and affect all classes of employees represented by the Order of Railroad Telegraphers. Based on our membership survey, approximately one hundred positions had been eliminated other than in the station agent positions.

Defendants' Exhibit 2 for identification is a letter dated December 24, 1957 on Chicago and North Western Railway Company stationery, showing Mr. T. M. Van Patten 226 as director of personnel, and Mr. H. R. Beisel, assistant director of personnel, addressed to Mr. R. B. Boyington, 1703 Daily News Building, 400 West Madison Street, Chicago 6, Illinois. Mr. Boyington is the General Chairman of our organization on the North Western Railway, although that designation is not shown in the address of the letter. It is signed by Mr. T. M. Van Patten, acknowledging receipt of a letter of December 23, 1957.

It is a signed copy.

227-229 (Defendants' Exhibit 2 for identification was received in evidence as DEFENDANTS' EXHIBIT 2 and read.)

I was informed as to the proposed meeting on January 17, 1958. I assigned a vice president to participate in the discussions, said that the notice was a stabilization of employment notice, that such notices were permissible and it was a bargainable subject under the Railway Labor Act.

(Plaintiff moved that the answer be stricken as not responsive to the question and as being in part a legal argument. The Court overruled the objection.)

I assigned Vice President V. N. Kinkead to accompany Mr. Boyington, General Chairman on the North Western, and General Chairman Schuler of the Omaha to the conference. That conference dealt with both the notice that had been served on the North Western and on the Omaha with both General Chairman and Vice President Kinkead participating. The representatives of our organization did not accept Mr. Van Patten's premise that the matter of our notice was not bargainable.

Defendants' Exhibit 3 is a letter dated January 21, 1958 addressed to Mr. Boyington and signed by Mr. T. M. Van Patten. It is a signed document.

(Defendants' Exhibit 3 for identification was received in evidence as DEFENDANTS' EXHIBIT 3 and read.)

A similar letter was received by the general chairman of the Omaha.

Mr. Boyington and Mr. Schueler made a reply to that letter. That reply was made in accordance with my instructions and the replies were in substance identical. Defendants' Exhibit 4 is the reply made by Mr. Boyington.

(Counsel for defendants offered Defendants' Exhibit 4 for identification in evidence. Counsel for plaintiff objected to the admission in evidence of such a document to

prove the statements contained in them, stating that the statements were self-serving and that there was no opportunity for cross-examination of the document. The 238 Court said that all of these letters were introduced to show the correspondence which took place concerning this matter and received the exhibit in evidence as DEFENDANTS' EXHIBIT 4.)

239-240 (The exhibit was then read.)

Thereafter I invoked the services of the National Mediation Board under the Railway Labor Act with respect to this dispute.

241 Defendants' Exhibits 5 and 6 are, respectively, the letter to the National Mediation Board covering the invocation of mediatory services and the formal application form itself. The letter to Mr. E. C. Thompson is dated February 5, 1958, and the regular form application for mediation services is dated February 5, 1958. To that application for mediation services is attached a copy of the notice which we served upon Mr. Van Patten on December 23, 1957.

(Counsel for plaintiff objected to Exhibit 5 for the 242 reason that it was written neither by the North Western nor to the North Western, but by Mr. Leighty to the Mediation Board. Plaintiff's counsel objected that the exhibit was not part of the correspondence between the two disputing parties and was not binding upon the plaintiff and was simply self-serving and could not be cross-examined upon. The Court overruled the objection, stating that the exhibit is a part of the process showing what was done. DEFENDANTS' EXHIBITS 5, 6 and 6-A, the latter being the letter which was attached to Exhibit 6, were received in evidence.)

243 Like action was taken with respect to the disputes under the Omaha agreement, but at a later date.

Defendants' Exhibit 7 for identification is the copy fur-

nished to me by the National Mediation Board of its letter to Mr. Van Patten as a result of my invocation of the services of the Board. It is dated February 10, 1958. It solicits a statement that Mr. Van Patten might wish to make on my invocation of the services of the Board.

244 (Defendants' Exhibit 7 for identification was received in evidence as DEFENDANTS' EXHIBIT 7.)

Defendants' Exhibit 7-A is apparently a reply made by Mr. Van Patten of the North Western Railroad to the letter of February 10 addressed to him by Executive Secretary Thompson of the National Mediation Board. I was not furnished with a copy of that letter.

245-248 (Exhibit 7-A was then read.)

Thereafter the National Mediation Board wrote a joint letter to me and to Mr. Van Patten. Defendants' Exhibit 8 for identification is the copy sent to me.

249-251. (Defendants' Exhibit 8 for identification was received in evidence as DEFENDANTS' EXHIBIT 8 and read.)

Defendants' Exhibit 9 for identification is a copy furnished to me by the National Mediation Board of a letter addressed to Mr. T. M. Van Patten under date of March 7, 1958, and transmitting therewith a copy of a letter addressed by to the Board in response to the letter I have just read as Exhibit No. 8.

Exhibit 9-A for identification is a copy of the letter I wrote to the National Mediation Board in response to the letter I have read as Exhibit 8.

252 (Defendants' Exhibit 9 for identification was received in evidence as DEFENDANTS' EXHIBIT 9.

Counsel for plaintiff objected to Exhibit 9-A for the reason that the letter was from Mr. Leighty to Mr. Thompson and one not sent by plaintiff, and one, therefore, that could not be binding upon plaintiff. Counsel for plain-

253 tiff further objected that it was self-serving and hearsay. The Court received DEFENDANTS' EXHIBIT

9-A in evidence for the purpose of showing that it was sent and that, of course, the Mediation Board was informed of its contents. The Court noted that all such letters were admitted to show that they were sent and that as to the truth or veracity, that didn't matter. The Court stated that the contents of any of these letters might not be true and they might be shown to be untrue.)

254-257 (Exhibits 9 and 9-A were then read.)

The National Mediation Board thereafter endeavored to mediate the dispute. The mediator assigned to that task was Mr. Rupp. Vice President B. N. Kinkead represented the organization in the conferences. He kept in touch with me and reported to me as to what was occurring in the conferences. The mediatorial efforts of the Board continued for several days.

Defendants' Exhibit 10 for identification is a copy of the letter mailed to me addressed to Mr. B. N. Kinkead and Mr. Van Patten by Mediator Rupp.

(Defendants' Exhibit 10 for identification was received in evidence as DEFENDANTS' EXHIBIT 10 and read.)

261 Defendants' Exhibit 11 for identification is the copy furnished to me by the National Mediation Board of the letter from Mr. Van Patten to Mr. Rupp under date of June 12, 1958.

(Defendants' Exhibit 11 for identification was received in evidence as DEFENDANTS' EXHIBIT 11 and read.)

Defendants' Exhibit 12 for identification is a letter addressed by the Executive Secretary of the National Mediation Board jointly to me and Mr. Van Patten under date of June 16, 1958.

264-266 (Defendants' Exhibit 12 for identification was received in evidence as DEFENDANTS' EXHIBIT 12 and read.)

That letter would appear to indicate that the organization had declined the proffer of arbitration on May 28. Defendants' Exhibit 12-A is the letter written to me and Mr. Van Patten by Mr. Thompson, executive secretary, National Mediation Board, upon the expiration of the thirty-day period referred to in the letter of June 16. The date of that letter is June 16, 1958 in case A-5696.

(Defendants' Exhibit 12-A for identification was received in evidence as DEFENDANTS' EXHIBIT 12-A and read.)

In the meantime, I had acknowledged receipt of Mr. Thompson's letter of June 16. That is Defendants' Exhibit 13 for identification.

(Defendants' Exhibit 13 for identification was received in evidence as DEFENDANTS' EXHIBIT 13.)

270 Thereafter I either prepared or supervised the preparation of the strike ballot to be distributed to the employees I represent on the Chicago and North Western Railway and the Chicago, St. Paul, Minneapolis and Omaha portion thereof, seeking the views of the members as to whether they would authorize a strike if necessary to secure a satisfactory settlement of the proposed notice that had been served in December of 1957. That was under date of July 10, 1958. Plaintiff's Exhibit No. 5 is the strike ballot I have just referred to. It is the strike circular and the official strike ballot. It was distributed to all employees I represent on the Chicago and North Western Railroad, including the former Chicago, St. Paul, Minneapolis and Omaha branch.

272 (DEFENDANTS' EXHIBIT 14 for identification which was identical to Plaintiff's Exhibit 5 was received in evidence, not for the truth of the statements therein, but to show what was submitted to the employees in the form of information on the strike ballot.)

273 Under the constitution and by-laws of the Order of Railroad Telegraphers, this strike ballot was not a necessary condition precedent to my authorizing a strike. Under the constitution of our organization each railroad is divided into local divisions. The members of a local division elect by ballot a local chairman. Those local chairmen constitute the general committee and are the governing authority on that system's division. They have the authority to order a strike by a two-thirds vote of that general committee, with the approval of the president.

274 As to why the strike ballot procedure was followed, the general committee voted unanimously for the strike

275 because of the seriousness of the issues involved. We wanted to get an expression from our membership because a strike is a very serious matter. An overwhelming majority of the members voted in favor of the strike.

Thereafter I issued a letter under date of August 18 jointly with the representatives of the General Committees on the two properties, the North Western and the Omaha, under date of August 18, 1958, which constitutes a strike call and instructions pertaining to the conduct of the strike.

Plaintiff's Exhibit 6 is a correct copy of the strike call  
276 and instructions to which I have just referred. This call and instructions were sent to all officers and members of the North Western. I don't believe the railroad was given a copy or notice of it, although several officers of the railroad undoubtedly received it because they are members of our organization.

277 (DEFENDANTS' EXHIBIT 15 for identification, being identical to Plaintiff's Exhibit 6, was received in evidence not for the truth of the statements therein, but only to show what was done.)

In this letter I make the statement, "The vote on the strike ballot was almost unanimous in favor of a  
278-280 strike". That is a correct statement. (The exhibit was then read in part.)

I notified the National Mediation Board on August 14 that we were setting a strike date and we notified the National Mediation Board on August 19 that a strike date had actually been set. After my notification to the Board on August 14, the Board again sought to resolve the dispute through proffering its mediatory services on an emergency basis. I personally met with the mediator in the course of those efforts. There was no indication given

281 to me at that time that the representatives of the management were agreeable to negotiating something along the line that Mr. Heineman described this morning.

I would like to say at this time that what occurs in mediation proceedings is usually considered to be of  
283 a confidential nature. The mediator reported to us that the position of the carrier was adamant, that they had nothing to offer. Thereafter I received a telegram from the National Mediation Board informing me that they had been unsuccessful in resolving the dispute.

Defendants' Exhibit 16 for identification is the telegram to which I have just referred.

(DEFENDANTS' EXHIBIT 16 for identification  
284 was received in evidence and read.)

289 On August 22, 1958, Mr. R. C. Williamson gave me a copy of the letter he had received that date from Mr.  
290 T. M. Van Patten. Mr. Williamson is the General Chairman of the Order of Railroad Telegraphers on the Chicago and North Western Railroad. He succeeded Mr. Boyington; who retired in February of this year.

Defendants' Exhibit A for identification is the letter furnished me by Mr. Williamson on August 22.

291 (DEFENDANTS' EXHIBIT A for identification was received in evidence.)

Defendants' Exhibit A is on the stationery of the Chicago and North Western Railway Company, addressed to Mr. R. C. Williamson, 1703 Daily News Building, 400

West Madison Street, Chicago 6, Illinois, dated August 21, 1958. The letter states:

"Dear Sir:

Please refer to former General Chairman R. B. Boyington's letter of December 23, 1957, serving a formal notice on the Chicago and North Western Railway of the desire of the General Committee of the O. R. T. to amend the current agreement by adding the provision:

292 " 'No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the Carrier and the Organization.'

"Even though it is still our position that such provision does not in fact constitute a proper subject for a Section 6 notice on which carriers and representatives of employees are required to exercise every reasonable effort to reach agreement under the Railway Labor Act, it is also our position that your notice of December 23, 1957 is barred under the provisions of Article VI of the agreement, effective November 1, 1956, between this and numerous other carriers and the O. R. T. and certain other non-operating railway labor organizations with which I am sure you are entirely familiar. Our basis for this position that your notice is barred by Article VI is as outlined in the attached  
293 memorandum. It is therefore our purpose to submit this question to the Third Division, National Railroad Adjustment Board for determination.

Yours truly,

T. M. Van Patten."

294 Prior to the time that Mr. Williamson gave me that copy of that letter, I had never heard of there being any contention on the part of the plaintiff that the notice of December 23, 1957 was barred by the November 1, 1956 agreement. I have kept in close touch with my representatives handling that dispute through its progress. They at

no time reported to me any indication that such a contention had been made. After Mr. Williamson presented me with that letter, I instructed him as to what reply he should make. DEFENDANTS' EXHIBIT B for identification is a copy of the reply that Mr. Williamson made.

295 (To the offer in evidence of the exhibit, counsel for plaintiff objected to its admission in the evidence for the reason that it is self-serving and is merely an argument. Counsel for defendants stated it was not offered to be binding on the plaintiff, but to show the position of the organization. The document so offered was received in evidence. The Court stated that there were many letters which may be admitted in evidence which may or may not be true, but were not admitted for the truth, but to show that such statements and such representations were made by one side to the other in order that the Court may have before it a true perspective of what has gone on between the parties. The Court stated that it was admitted for that purpose and not necessarily for the truth of the statements therein contained.)

Defendants' Exhibit B is from The Order of Railroad Telegraphers, Chicago and North Western, System Division No. 76, under date of August 22, 1958, and is addressed to Mr. T. M. Van Patten, Director of Personnel, Chicago and North Western Company. It reads:

"Dear Sir:

"This will acknowledge receipt of your letter of 297 August 21, 1958, stating that it is your purpose to submit to the Third Division, National Railroad Adjustment Board, a question as to whether our Section 6 Notice of December 23, 1957 is barred by Article VI of the Agreement of November 1, 1956.

"The Agreement of November 1, 1956 is a Mediation Agreement reached through mediation under the provisions

of the Railway Labor Act in Case A-5256. The question you now raise for the first time seeks to raise a controversy over the meaning or application of Article VI of said agreement. In case of any such controversy, Section 5, Second of the Railway Labor Act authorizes either party to the agreement to apply to the National Mediation Board for an interpretation of the meaning or application. In docketing the dispute arising under our December 25, 1957 notice the National Mediation Board held that a proper Section 6 Notice had been served.

298 "The question you now raise is not referable to the National Railroad Adjustment Board not only because of the specific primarily jurisdiction of the National Mediation Board over the interpretation of mediation agreements, but also because it does not fall within the statutory jurisdiction of the Adjustment Board. Section 5, First (i) of the Railway Labor Act permits reference to the Adjustment Board only of disputes 'growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions.'

299 Article VI of the Agreement of November 1, 1956, although contained in an agreement other parts of which concerns rates of pay, rules or working conditions, does not itself concern rates of pay, rules or working conditions within the meaning of Section 5, First (i). You have heretofore recognized this to be true and have not handled the question on the property in the usual manner for handling disputes referable to the Adjustment Board as the law requires prior to such disputes being referred to the Board.

Very truly yours,

R. C. Williamson"

300 Defendants' C for identification is a copy of the agreement dated November 1, 1956 between railroads represented by the Eastern, Western and Southeastern

Carriers' Conference Committee and the employees of such railroads represented by the Employees' National Conference Committee; eleven cooperating railway labor organizations. That document contains as its Article VI the Article VI referred to in Mr. Van Patten's letter Exhibit A and in Mr. Williamson's letter Exhibit B. That exhibit is not the entire agreement.

302 (EXHIBIT C was received in evidence in order to show what Article VI is.)

303 The Order of Railroad Telegraphers is a party to that agreement. Both the Chicago and North Western Railway and the Chicago, St. Paul, Minneapolis and Omaha Railroad are parties to the agreement. The Western Carriers' Conference Committee represented those railroads in negotiation of this agreement. The Employees' National Conference Committee represented The Order of Railroad Telegraphers. I was chairman of the Employees' National Conference Committee. Article VI of that agreement, Exhibit C, reads as follows:

"Article VI. Duration of Agreement.

"The purpose of this agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraphs (d) and (e) of this Article, no Carrier or Organization, party to this Agreement, will serve any notice or progress any pending notice to—

"(a) Increase or decrease rates of pay established by Articles I, II, III and IV of the Agreement.

"(b) Increase or decrease the rate of compensation provided in existing agreements, or eliminate or establish agreements providing the rate of compensation, covering overtime payments, arbitrary payments, Sunday or Holiday payments, time paid for but not worked, or increase

or decrease the number of paid Holiday or paid vacation days.

“(c) Increase or decrease the amount of payments required to be made by the agreement of December 21, 1955, and Article V of this agreement for hospital, medical and surgical benefits for the employees and their dependents.

“(d) This Article VI does not prevent adjustments  
305 under normal processes on the individual carriers in the rates of pay of individual positions; correction of inequities as between rates or individual positions on a particular railroad; or negotiation of rates for new positions or positions where the duties or responsibilities have been or are changed. This Article VI will not debar management and committees on individual railroads from agreeing on any subject of mutual interest.

306 “(e) This Article VI does not prevent the progressing of pending notices, the serving of notices and the negotiation of agreements dealing with stabilization of employment, separation allowances or other matters not prohibited by the foregoing provisions of this Article VI.”

Defendants' Exhibit 18, which is on the letterhead of The Association of Western Railways and is identified as Circular No. 772-11, is a document which was given to me by Mr. Welch, the executive secretary of the Association of Western Railroads. It was furnished to me for information as chairman of the Employees' National Conference Committee.

(DEFENDANTS' EXHIBIT 18 for identification was received in evidence.)

307 Defendants' Exhibit 18, dated November 9, 1956  
reads as follows:

"Circular No. 272-11.

"Chief Operating Officers Western Railways:  
(Represented by Western Carriers Conference Committee)

"Referring to our Circular No. 772-9 of November 1,  
1956 transmitting copies of Agreement of that date  
308 between the Carriers represented by the Eastern,  
Western and Southeastern Carriers Conference Com-  
mittees, and their employees represented by the Eleven  
Cooperating Railway Labor Organizations:

"The Carriers Conference Committee and the Employees'  
National Conference Committee have entered into an under-  
standing that controversies over the meaning or the appli-  
cation of the November 1, 1956 Agreement which are not  
settled on the individual properties will be referred to the  
Committees signatory to the Agreement for disposi-  
309 tion. It was agreed that instructions to that effect  
would be issued by the three regional bureaus to the  
railroads parties to the Agreement, and by the Employees'  
National Conference Committee to the respective General  
Chairmen of the Eleven Cooperating Railway Labor Or-  
ganizations on the individual carriers.

"The understanding contemplates that if the Commit-  
tees signatory to the Agreement are unable to resolve the  
question, such Committees will then endeavor to agree upon  
a method for final disposition of the dispute. If the Com-  
mittees can neither resolve the question, nor agree upon a  
method for final disposition, it has been agreed that Sec-  
tion 5, Second of the Railway Labor Act will then be in-  
voked. Section 5, Second reads as follows:

'In any case in which a controversy arises over the  
meaning or the application of any agreement reached

310 through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing on both sides, give its interpretation within thirty days.'

"Accordingly, any controversy arising on your railroad concerning the meaning or application of the agreement of November 1, 1956, which you are unable to settle on the property should be submitted to the undersigned by letter (please furnish 30 copies thereof) containing all of the pertinent facts, for handling by the Carriers' Conference Committee and the Employees' National Conference Committee, Eleven Cooperating Railway Labor Organizations, pursuant to the understanding herein outlined.

311 Yours very truly, R. F. Welch, Executive Secretary"

I have continued to function as chairman of the Employees' National Conference Committee since November 1, 1956. In that capacity I have participated in the functions of the joint committees referred to in the circular that I have just read. To my knowledge, the Chicago and North Western Railroad Company has not submitted to that committee any controversy or contention as to the applicability of Article VI of the November 1, 1956 Agreement to my proposal of December 23, 1957. I can say definitely that the Employees' National Conference Committee has never received any such reference of any dispute to this Committee or any request that such dispute—

312 The Committee was in session through August 22, 1958. We were in session all last week. We were in session when this suit was begun and at least up to that time there had been no receipt of any claim by those committees.

Referring to Mr. Heineman's testimony as to the conversation he said he had with me in the corridor of the State Office Building in Madison, Wisconsin, on May 26, 1958, during the course of the hearing before the examiner of that Commission in Madison, Mr. Heineman asked me if I could see him briefly. He asked me if I could see him at recess or at some convenient time for a moment or two.

I told him I would be glad to, and at either the recess in the morning or at the noon recess, I am not positive

313 which, Mr. Schoene and I met with Mr. Heineman and

Mr. Fitzpatrick, who is president of the North Western.

At that time the railroad had already put in the order of the South Dakota Public Utilities Commission. Mr. Heineman asked me if I thought any good purpose would be served by he and I meeting and discussing the agency situation, either with respect to South Dakota or with respect to the system-wide basis. I said that at that time I did not feel that any good purpose would be served. I then turned to our counsel and asked him what his opinion was. He stated, "I think we are too far apart."

315 As to whether I recall specifically Mr. Heineman's remarks to the effect that the door was always open,

I recall that he made that remark, yes, sir. As to whether he said, "I will discuss this specific problem concerning the system-wide and the South Dakota problem," no, he did not say that. He said, "The door is always open."

Now, just what he meant by that, I don't know. I could only give you my conclusion of what he meant. As to whether immediately prior to that, he discussed with me or asked me something to the effect that there was anything

I could discuss regarding those two particular problems, yes, he did. He said, "Would any purpose be served by a discussion?" That statement was limited

317 to agencies, too, to the agency and also to the South Dakota problem or on a system-wide basis. Those two

problems he indicated or asked me if there would be any good purpose served, or something to that effect.

As to whether I said we were too far apart on those particular problems, no, I said that I did not think any good purpose would be served at that time. And my counsel then said, I turned to him and said, "What do you think about it, Mr. Schoene?" And he replied, "No, I think we are too far apart." Now that is my best recollection of what the conversation was.

As to the general proposition on this proposed rule, we never discussed it personally, to my recollection, on that or any other occasion.

318 My conclusion as to the effect of his conversation was that he said, "The door is open, but I won't discuss that rule." He would discuss the particular situations.

So far as the proposal of December 23, 1957 is concerned, that was in mediation and being actively handled in mediation on that very day. Mr. Kinkead, our vice president, was representing me, and Mr. Van Patten was representing the railroad.

319 The document marked for identification as Defendants' Exhibit 19 is a copy of the agreement between the Chicago and North Western Railway Company and the Order of Railroad Telegraphers, effective April 1, 1950, and the document identified as Defendants' Exhibit 20 is the agreement between the Chicago, St. Paul, Minneapolis and Omaha Railway Company and the Order of Railroad Telegraphers, effective March 1, 1956. They are the latest printed booklets. However, with respect to both documents, a number of supplemental national agreements have been entered into, to which both the North Western and Omaha are parties, which are not included in those documents. The agreement of November 1, 1956 would be an example of the kind of national agreements that I am referring to,

insofar as the Omaha is concerned, and all the national agreements entered into since 1950 would not be in 320 the North Western booklet because it was published in 1950. Health and welfare, improved vacation, wage increases on several occasions, the union shop rule and several other items that were contained in the 1953-54 agreements are the sort of subject matters that have been dealt with in the national agreements since 1950. These are the over-all basic agreements which have been supplemented by various other ones since that time. These show the methods by which amendments may be made to provide for all those contingencies.

321 (DEFENDANTS' EXHIBITS 19 AND 20 for identification were received in evidence.)

I have been an officer in my organization continuously since 1924. I was local chairman from 1924 until 322 1942. From 1924 to 1937 I also worked a position on the railroad in addition to being local chairman. In 1937 to 1939 I was a deputy president of our International Organization. From 1939 to 1942 I was general chairman of the Order of Railroad Telegraphers on the Milwaukee Railroad. From 1942 to 1946 I was first vice president of the International Organization, and since 1946 I have been president of the International Organization. I have also served as chairman of the Railroad Labor Executives Association since 1950. It is an association of the 323 chief executives of the various standard railway labor organizations. Its purpose is to discuss and take common action upon the problems of mutual interest. I have served as chairman of the several successive Employees' National Conference Committees of the non-operating railway labor organizations since 1947.

(At this point counsel asked, "In the course of your consultation with the chief executives of the other organizations, have you had an occasion to become familiar to a

substantial degree with the nature of the agreement proposals they are progressing on various railroads?" Counsel for plaintiff objected to this question and similar such questions as being irrelevant to the issues in the case. The Court gave counsel for plaintiff a standing objection to this line of questioning, but overruled such objections and permitted the witness to answer such questions.)

324 I am familiar with such proposals. I have become familiar with proposals or agreements in effect concerning stabilization of employment. The first agreement that I have in mind was the agreement that was entered  
325 into back in the '20s. The agreement of the shop crafts on the Seaboard Air Line is what I was referring to.  
326 (At this point counsel for plaintiff again stated his objection. The Court said the witness was getting far afield, but it was not harmful and certainly won't be binding in any manner, and that the witness may answer for that purpose.)

As to the Seaboard agreement, the organization and the carrier originally met in September or October of the preceding year, now it is in December, to agree upon a minimum force of positions for the ensuing year. That agreement has been carried forward from year to year. It provides that the railroad will not employ less than a certain number of people. It so happens that in 1957 the number was identical, 1,646 for each year, 1957 and  
327 1958. There are some savings clauses provided in the agreement, but it is an agreement which in effect does stabilize the employment for that group on that property by guaranteeing a certain number of positions throughout the year.

(Counsel for plaintiff again renewed his standing objection and further stated that the agreements should be presented or offered rather than having the witness summarize them so that counsel for plaintiff could state his

objection as to the materiality and relevancy and competency. The Court overruled the objections.)

329 I know of other stabilization of employment agreements collectively bargained in the railroad industry: The Railway Yardmasters of America and the Chicago, Great Western Railway; the Railway Yardmasters of  
330 America and the Missouri-Kansas-Texas Railway.

The Brotherhood of Railway and Steamship Clerks and the Boston & Maine Railway; the Southern Railroad and practically all of the standard organizations on that property, are both currently bargaining on the subject matter. The proposals there being bargained are in the nature of a guarantee of some minimum employment probably. I probably overlooked the non-operating group on the M-K-T in this connection. They are bargaining, too, on that issue. There are several other issues involved in their notice. This issue is particularly involved.

332

*Cross-Examination.*

As to whether it is a fact that the Organization has taken the position that the memorandum which is Exhibit 18 does not apply in those areas that our Organization has termed "Stabilization of Employment", the memorandum insofar as the disputes committee is concerned, we contend does not apply in those areas because the agreement, Article VI, is so clear on that issue.

333 (Counsel for plaintiff asked whether the Organization had taken that position in a letter or letters signed by Mr. Leighty. Counsel for defendants objected. Counsel for plaintiff asked, "Isn't it a fact that you have taken that position in a letter signed by you?" Counsel for defendants objected again and the Court sustained the objection.)

335 In some of our conferences we did take a position similar to that, and then we outlined our exact position

in our letter of July 18, 1958 to the three chairmen of the Carriers' Conference Committees. It is a four-page letter. That was with relation to three specific claims that were before our committees. Insofar as the maintenance of way organization is concerned, it involved practically all of the Class I rail carriers in the United States. Insofar as the Boston and Maine Railroad is concerned, it involved the clerks on that property. The other one was with respect to the telegraphers on the Minneapolis and St. Louis Railway. I think in an issue of that kind, there was a dispute that arose on those three issues and the carriers' committee took one position and we took another one, and we had a lot of discussions and contentions to each other in the course of those discussions. Our final position is outlined in our letter of July 18.

337 (PLAINTIFF'S EXHIBIT 16 for identification,  
338 the letter of July 18 referred to, was received in evidence. Counsel for plaintiff stated that he was offering it as an admission against interest.)

339 I did not mention having this identical rule up for consideration with the B&M or the Southern Railroad. Practically an identical rule is up for consideration with the M&StL. As to whether there is any difference in the rules at all, I would have to compare the two rules before I can tell you. We probably have a thousand rules up for presentation on various properties. If you ask me to remember all of those rules, it is just an impossibility. To the best of my knowledge, it is a very similar rule and it is certainly designed to be the same as much as possible.

340 That question has been submitted to the National Railway Adjustment Board by the M&StL. As to whether the M&StL in that submission took the same position as the North Western Railroad has taken, I have not seen the M&StL submission. They have thirty days within

which to furnish their submission to the National Railroad Adjustment Board, and I have not seen their submission.

341 As to whether I mean that I did not know what position the M&StL had taken regarding this rule, I have a report in my office with respect to the position that was taken by our conferees, but I would have to refer to that report to give you a definite answer because, as I said before, we have many, many rules in progress of negotiation on various railroads, and until I refresh my memory I couldn't give you an honest answer to those questions, and I am under oath, and I intend to do that. I do not know what position the M&StL took before the Railway Adjustment Board on this rule.

342 I testified, based on our membership records, that approximately 100 positions have been discontinued on the North Western Railway. That would not include resignations and voluntary withdrawals and reduction of numbers. As to what positions were abolished in this number of positions I have described, to my personal knowledge, I know that a number of second trick positions were abolished. As to whether there are any other positions which I had in mind when I testified to this diminished number of positions beside the second and third trick agency positions, it is my understanding that there has been a reduction in forces during that period in the yard offices, and also in the offices which we commonly call "relay" offices.

I could not give you any specific locations or positions during that period of time where there had been a reduction of forces. As to whether I can give even one location, oh, I do know that in the testimony of your own witnesses in South Dakota, they testified that the second trick positions had been abolished at a number of stations that were

now one-man stations, but I couldn't recall the names  
344 of those stations. As to whether that occurred before  
or after 1956, I would assume that that happened after  
1956. I would have to go to the records and other people  
would get it.

As to the lease combining the Omaha and North Western  
and their operation as a single system, it is my under-  
345 standing that that lease was approved by an Interstate  
Commerce Commission order. To a certain degree,  
that Commission's order includes in its terms provisions  
to take care of the dislocation of employment that might  
result. As to just what the degree was, I might say that  
several hundreds of those orders come out every year,  
various kinds, and some of them are quite lengthy, and if  
I attempted to read all of that material—

346 (PLAINTIFF'S EXHIBIT 17, the order and report  
of the Interstate Commerce Commission concerning the  
lease of the Omaha Railroad by the Chicago and North  
Western Railroad as of January 1, 1957 was received in  
evidence.)

349 As to whether it is a fact that my organization agreed  
350 to the entry of this order, there again I would have to  
check our records on it. There are hundreds of those  
orders coming out every year and some of them we oppose  
and some of them we agree to. Whether this is one that we  
agreed to or opposed, I couldn't say. We also have what is  
known as the Washington Job Protection Agreement that  
has some influence in connection with positions in consolida-  
tions of this kind.

The order, Plaintiff's Exhibit 17, reads in part as fol-  
lows:

351 "The period during which this protection is to be  
given, hereinafter called the Protected Period, shall  
extend from the date on which the employee was displaced,  
to the expiration of four years from the effective date of

our order herein, provided, however, that such protection shall not continue for a longer period following the effective date of our order herein, and the period during which such employee was in the employ of the Carriers prior to the effective date of our order."

In other words, if he had been employed two years, it would be limited to two years, and not more than four years, he would be entitled to four years.

352 (At this point the Court asked whether any such provisions as referred to were also included in the findings of the South Dakota or Iowa Commissions. Mr. Schoene stated that there were no such conditions.)

354 I met with the mediator personally during mediation E-175. That mediator was Mr. Rupp. I only met with him once personally on the afternoon of August 19, late in the afternoon, probably four o'clock, at the Congress Hotel. Mr. Kinkead, our vice president, and Mr. Schoene were also there. That is all.

The mediator said the railroad was adamant and  
355 that the railroad had not changed its position and had no proposal to offer. As to whether the mediator himself made any suggestion to me as to a basis on which an agreement of some sort might be reached, no, he did not.

As to whether he made any suggestions as to a possible basis on which an agreement might be reached, well, we had considerable discussion with respect to what had transpired, and I cannot recall that there was any indication given by him that the North Western—I am positive that he said that the North Western had nothing to offer, and I think he said they had inquired if we wanted to modify our proposal, but as I said before, we were in a room there for probably thirty minutes and there was considerable discussion. I cannot recall everything that was said. I do not  
356 recollect that the mediator himself suggested any possible basis on which an agreement might be worked out.

I do not remember any suggestion from Mr. Rupp as to a basis of solving the dispute. I don't believe that it is possible such a suggestion was made and I don't remember it.

357 In Defendants' Exhibit 10 the National Mediation Board proffered arbitration in its letter of May 27, 1958. Defendants' Exhibit 11 is a letter of the North Western Railway Company declining arbitration, dated June 12. Before the North Western declined arbitration, our Organization had already declined arbitration. As to whether there is really an exhibit missing between 358 10 and 11, to keep the whole story intact, I think it was testified that we declined to arbitrate.

(At this point counsel for plaintiff asked, "Mr. Leighty, you were present yesterday and Monday when your attorneys, Mr. Schoene and Mr. Elson, stated, I believe, to the Court that there was no connection between the South Dakota and Iowa Commission orders and the strike ballot, strike call and strike, didn't you, sir?" Counsel for 359 defendant stated, "Well, I made a statement several times, your Honor. I made it yesterday, as a matter of fact, that this notice was served in order to meet situations such as arose in South Dakota and Iowa, and that actually, as this witness testified to earlier, there were one hundred positions abolished even before the rule was served. But we don't say that there was no connection at all. We simply say that the rule which gave rise to the strike was designed to meet this kind of a situation."

360 Counsel for defendants stated that he conceded that that notice was served to meet this kind of a situation, and that there was a connection between the South Dakota and Iowa orders and the strike to the extent he had indicated.)

361 As to whether it is a fact that the petition was filed with the Public Utilities Commission of South Dakota

on November 5, 1957, and that the first demand for this rule was served December 19, 1957, the request for the rule was made subsequent to the filing of your petition in South Dakota, that is correct. The rule had been under consideration for several months previous to that time. As to whether it also was served or requested or demanded after hearings had already been held in the South Dakota case at Pierre, South Dakota, and after the petition had been filed in Minnesota, the dates will speak for themselves. I don't recall all those dates.

362 Referring to Plaintiff's Exhibit 6, it is not correct that I either wrote or approved that document. I either wrote or supervised the writing of it. I signed it and am familiar with its contents. I, in fact, approve of them.

As to whether those two orders would have accelerated my action in connection with this proceeding, well, if you mean the filing of the notice, now, when they served notice and made application to the South Dakota Commission asking for this, very frankly, we didn't believe the South Dakota Commission would ever go along with anything of that kind. As to whether it accelerated the strike situation,

well, the notice was served long before the strike  
363 action was taken. As to whether the demand for the

adoption of the rule accelerated it, well, the rule was  
364 originally demanded or requested in December. The

order of the Commission didn't come out until May, some five months later, and the action of the South Dakota Commission wouldn't necessarily make it more evident how important a rule of that kind was.

I supervised the preparation of the strike ballot of July 10, 1958 and I was definitely familiar with its contents. Plaintiff's Exhibit 5 reads in part as follows:

365 "Last fall a program of this sort that is of vital concern to our members was initiated by this management. This program (was directed at the elimination

of the vast majority of agents serving one-man stations. Proceedings were begun before the Public Service Commissions of South Dakota, Minnesota, Iowa and Wisconsin, seeking authority either to close nearly all of the one-man stations or to have one agent serve two, three or four stations. Similar proceedings in other states may be expected momentarily."

I testified in the Commission hearings in South Dakota.

I testified in Iowa to a limited degree. Mr. Schoene 366 represented us at some of those hearings, and Mr.

Griffith, another one of our vice presidents, represented us at some of those other hearings. We have appealed from the South Dakota Commission, but at 367 this time have not appealed from the Iowa Commission order. I don't believe that the time has expired to appeal the Iowa Commission order.

In addition to the appeal from the South Dakota order, our organization instituted a suit requesting a temporary restraining order in Minnehaha County. The restraining order was obtained relating to the South Dakota proceedings. I think that the court eventually denied an injunction.

369 As to whether another railroad presented to the Minnesota Commission a program extending the territory of the station agents, it was not a similar program 370 as it was limited to one agent serving two stations.

To that extent it is similar to the North Western Central Agency. I want to change that answer because in those cases the carrier proposed to continue all of the services at each station and curtail the number of hours that were involved. Here your application and the order granted you by the Commission permits you to discontinue less carload service at the station, and the sale of tickets and the handling of express, and the handling of telegrams, and only carload shipments are handled at those stations,

and it differs considerably from your Central Area Agency plan. In general, I would say that that plan represented  
371 a lesser change than does the North Western's plan.

An order was issued by the Minnesota Commission concerning the plan. It denied the application with respect to certain stations and certain stations it permitted it, and at certain stations it took it under advisement. As to the stations where it was permitted, that order was challenged in court by our attorney. That challenge was successful so that no part of that program went into effect.

373 The requested rule which I served on December 19, if that rule were put in effect, it would mean that the railroad could not abolish the position of an agent at a one-man station agency without the agreement or permission of the union.

(Counsel for plaintiff then asked the witness, "And that would be true, would it not, that the railroad would have to get the approval of the union before it could abolish the position of an agent at a one-man station, even though all of the trains on that line had been abandoned and no trains passed the station?" Counsel for defendants objected that the question was argumentative and the Court sustained the objection.)

374 As to whether before the strike call was issued I knew that the supplemental unemployment benefits which were the subject of an agreement between the railroad and many of the other non-operating brother-  
375 hoods were available to our Organization, I had not  
376 been so informed. To my knowledge, no other representative of our Organization had been informed. As to whether I knew they were available or had an opinion that I could secure them if that would dispose of the dispute, well, I presume that if we had been willing to dispose of this dispute by the totally inadequate provisions

of that agreement, in my opinion, that we possibly could have secured it.

377 As to whether I certainly knew from listening to Mr. Heineman's testimony that the same terms of that agreement were available to me retroactively, Mr. Heinemen so testified on the stand and I heard his testimony.

378 Referring to the proposed rule "No position in existence on November 3, 1957 will be abolished or dis-  
379 continued except by agreement between the Carrier and the Organization," as to whether our organization ever offered to the plaintiff, the North Western Railroad any lesser demand than is embodied in that rule, the carrier has refused to discuss the rule with it, and the normal process of collective bargaining had not progressed because of that.

(At this point the Court asked the following questions and the witness made the following answer:

The Court: "Well, answer, Mr. Witness, whether you have ever written them or told some of them, 'Come on, fellows, we will reduce our offer.' Have you ever made such a statement?"

The Witness: "In connection with this rule, no."

The Court: "Well, that takes care of the point.")

380 Subject to the qualifications of my previous answer, the only alternative which up to the present I have offered the North Western Railroad was to comply with this rule or strike.

381 A time slip is a claim for pay that the employee files, and usually in some of them—in most of our positions—it is a slip that must be sent in each day showing what hours the individual worked and what pay he is entitled to. That is a part of the usual and regular procedure on railroads. It is the common method on most railroads. I think the North Western has some circum-

stances under which a report or payroll is made up, when time slips are not required, according to my understanding. I think your non-telegraph agencies have a semi-monthly payroll form that they use and inasmuch as they are not covered by the hours of service of law, that 382 suffices. That is to get their regular salary, the regular monthly payment or bi-monthly payment.

In addition to the regular amount which a man may be paid, these time slips can be used to state a claim for additional compensation, and they can also be stated in a claim made by the general chairman or local chairman. The use of time slips is one of the methods in which a man can make a claim for additional compensation that he feels he is entitled to. If the railroad agrees with him, of course, he eventually gets paid. 2

As to the procedure that then follows if the railroad does not agree, well, the case is handled by the local chairman, usually with a higher officer of the carrier in an 383 attempt to secure payment, and then it is appealed on up to the, if payment is still declined, highest operating officer of the carrier. That is the normal procedure. Then the highest operating officer of the carrier is the last person on the property before that problem would be presented in the normal course of events. What we are talking about is on the property. Normally, if an agreement is not reached, the next step is to submit the question to the Railway Adjustment Board, but not necessarily. Either party may submit it or it may be submitted jointly.

385 As to whether it is my position at this time that the already existing collective bargaining agreements between the Organization and the North Western Railroad require the North Western to bargain with my Organization before the Central Agency Plan can be put into 386 effect in South Dakota, before it can begin, I don't believe there is any rule in the agreement that specifically

provides for certain negotiations, but in the interest of labor-management relations, certain of the organizations should have been consulted in any program of that kind.

388 I never suggested to the mediator a demand less than the rule as stated in Plaintiff's Exhibits 5 and 6.

392

*Redirect Examination.*

397 Defendants' Exhibits 21, 22 and 23 are copies of documents that were attached to the originals of the letter of July 18, 1958, which is Plaintiff's Exhibit 16, when it was sent to the Chairmen of the respective Carrier Conference Committees.

398 (DEFENDANTS' EXHIBITS 21, 22 AND 23 for identification were received in evidence.)

These three documents are the decisions proposed by the Employees' National Conference Committee to the Carriers' Conference Committees in the Brotherhood of Maintenance of Way case with respect to stabilization; the decision proposed in the Brotherhood of Railway and Steamship Clerks case on the Boston & Maine Railroad with respect to stabilization, and the decision proposed by the Committee on the Order of Railway Telegraphers case on the Minneapolis & St. Louis Railway dealing with stabilization.

399 Prior to the preparation of those proposed decisions, the railroads, parties to the several disputes that I have indicated the proposed decisions were related to, had submitted to the Carriers' Conference Committees disputes concerning the application of Article VI of the November 1, 1956 agreement. They were submitted in conformity with the instructions of that circular identified as Defendants' Exhibit 18.

The members of the Employees' National Conference Committee considered the question of whether in their judg-

ment those particular rule change proposals involved in the disputes were or were not barred by Article VI 401 of the November, 1956 agreement. After such consideration, Defendants' Exhibits 21, 22 and 23 were prepared as the proposed decisions of the Employees' 402 National Conference Committee. They were discussed with members of the Carriers' Conference Committee and argument produced as to why they should be the decision of the joint committees. Except for the identification of the dispute, the proposed decision in each of the three cases is identical.

403. One of the exhibits referred to reads as follows:

"Article VI, Paragraph E of November 1, 1956 agreement excludes proposals on that subject from any restriction upon serving or progressing of notices pursuant to the Railway Labor Act for the negotiation of agreements pertaining thereto.

"Proposals of this character give rise to no dispute for resolution by the Carriers Conference Committees and the Employees National Conference Committee."

404 In presenting this decision on these proposed decisions to the Carriers' Conference Committee, the Employees' National Conference Committee contended that Paragraph E of Article VI of the November 1, 1956 agreement so clearly excluded proposals relating to stabilization of employment from any restriction under that agreement that no problem of interpretation was presented.

(Counsel for plaintiff objected to the above answer, but the Court stated that it was purely the witness' opinion and he would let it stand.)

405. It was explained to the members of the Carriers' Conference Committee that it was for that reason that the last sentence of that proposed decision was included.

(Counsel for plaintiff objected that the witness was 406 attempting to characterize and draw legal conclusions

and give explanations and motivations<sup>o</sup> for drawing up the language of the proposed decision, and that this was improper. The Court denied the motion to strike the answer.)

408 The members of the Carriers' Conference Committee did not agree to the proposed decisions that the Employees' National Conference Committee proposed. They submitted to the Employees' National Conference Committee the proposed decisions which they suggested for adoption by letter. My letter of July 18 was in  
409 reply to that letter. (Page 3 of that letter, Plaintiff's Exhibit 16, was then read.)

The procedures of the Railway Labor Act mentioned in the letter had reference to Section 5.

Concerning the position that the Minneapolis and  
414 St. Louis Railway had taken in a certain submission to the National Railway Adjustment Board, I have received in my office the customary letter of intention to submit a dispute which normally is used to inaugurate proceedings before the Third Division of the National Railroad Adjustment Board. That includes a statement of the claim submitted.

(At this point counsel for defendants asked the witness about the substance of the claim and counsel for plaintiff objected that the witness had previously stated he had no idea what the claims were. The objection was overruled.)

The statement of claim in substance is that the car-  
415 rier claims that a proposed rules change substantially identical to that pending on the Chicago North Western Railroad is barred by Article VI of the November 1, 1956 agreement.

416 We have challenged the jurisdiction of the National Railroad Board of Adjustment to hear this case on substantially the same basis as outlined in Mr. Williamson's letter to Mr. Van Patten of August 22, 1958, Exhibit B.

417 B. N. KINKEAD, a witness called in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

*Direct Examination.*

My name is B. N. Kinkead. My residence is 1641 19th Street, Parkersburg, West Virginia. I am first vice president of The Order of Railroad Telegraphers. I was assigned by President Leighty to represent the organizations in the effort to negotiate the proposed rule on the Chicago and North Western Railroad which has been discussed  
418 here as having been served on December 19 and 23, 1957. In my representation of the organization in the initial conference I was accompanied by General Chairman Boyington and Mr. Schueler.

The initial conferences commenced at 2:00 p. m. on January 17, 1958 pursuant to the letter that Mr. Van Patten had written to the general chairmen, a copy of which is in evidence as Defendants' Exhibit No. 2. On January 17 we stated our position at the outset that we were not meeting Mr. Van Patten on the basis of his letter, but were willing to discuss the matter. We thought it was a proper  
419 notice under Section 6 of the Railway Labor Act, but Mr. Van Patten did not agree to that. He reiterated his position as contained in the letter you have just referred to. At one juncture Mr. Van Patten remarked that we were pikers as compared with another organization that had served a similar notice, because that other organization had requested a retroactive date as of the effective date of its agreement, while our request was for the date of December 3, 1957. That other organization to which reference was made was the Railroad Yardmasters of America. That conference ended without any discussion of the merits of our proposal.

420 The next occasion I had to deal with the progress of this proposal was on May 22, 1958 when I was instructed to handle the matter in mediation with Mediator Rupp. He had been assigned as mediator pursuant to the invitation of mediation by President Leighty and handled the matter from May 22 until the afternoon of May 26, 1958. The mediator met separately with us on the one hand and representatives of the carrier on the other. There was no joint meeting with any management representative. The handling of the matter consisted of a series of meetings with Mr. Rupp.

421 Referring to my notes of these conferences, we met with the mediator on May 23 and May 26. I talked with him on the telephone on at least two occasions in addition to the two meetings in the hotel on May 23 and May 26, 1958.

422 Neither at the meeting with Mr. Van Patten on January 17, 1958 nor my meetings with the mediator at any time up until August 22, 1958 did I ever hear any intimation of a contention on the part of the Chicago North Western Railroad that this proposal was barred by Article VI of the November 1, 1956 agreement. At no time over that period did I receive any information or indication that the railroad was agreeable to discussing the merits of the proposal.

*Cross-Examination.*

Mr. Leighty did not report to me the conversation up at Madison. As to whether I recall in the meeting in August whether or not the mediator suggested any  
423 avenue of approach to a possible settlement, no, he did not.

424 K. G. SCHOCH, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

*Direct Examination.*

My name is K. G. Schoch, 537 South Dearborn Street, Chicago 5, Illinois. I am president of the Railroad Yardmasters of America. That is not the Railroad Yardmasters of North America.

425 Defendants' Exhibit 24 is a copy of an agreement which the Railroad Yardmasters of America has made with the Chicago Great Western Railway Company.

(Counsel for plaintiff objected to the offer of Defendants' Exhibit 24 for identification on the grounds that it was totally irrelevant and immaterial and incompetent to prove anything on the issues in the instant case, that the exhibit concerned two parties which were not parties in this proceeding, that the proposal in the agreement identified as Exhibit 24 was not substantially the same as made with the contract proposal with the North

429 Western Railroad. Counsel further objected that all the exhibit could show was that another railroad had been willing to sign such an agreement and that was all; that it could not even show a concession by another railroad as to bargainability as there may have been many other reasons for which that railroad would have been willing to sign the agreement and waive their objections to the nonbargainability. Counsel stated that one

430 of the main reasons why the agreement is not similar is because it says, "carrier agrees to maintain during period provided in Article 3 of the agreement of May 3, 1957, the yardmaster positions assigned to date." Counsel stated that that is for a fixed and limited period which

was not stated. The Court admitted Defendants' 432 Exhibit 24 for identification in evidence. The Court stated that plaintiff's objections to the exhibit would stand to all questions on the exhibit and that line of questioning.)

Defendants' Exhibit 24 reads in part as follows:

"Carrier agrees to maintain during the period provided in Article 3 of the agreement of May 3, 1957 433 the yardmaster positions assigned as of the date of this agreement, unless business conditions justify further reductions—in which event the carrier will negotiate agreement with the Railroad Yardmasters of America before such reductions are effective."

Defendants' Exhibit 25 for identification is a copy of the mediation agreement between the Railroad Yardmasters of America and the Missouri-Kansas-Texas Lines.

(Counsel for plaintiff made the same objections to this exhibit as to the previous exhibit. These objections were overruled and the exhibit was received in evidence as

**DEFENDANTS' EXHIBIT 25.)**

434 Paragraph 3 of Defendants' Exhibit 25 reads as follows:

"Carrier agrees to maintain during the period provided in Article 3 of the agreement of May 3, 1957 the yardmaster positions assigned as of the date of this agreement, unless business conditions specify further reductions in which event the carrier will negotiate agreement with the Railroad Yardmasters of America before such reductions are effective."

The reference made to the period provided in Article 3 of the agreement of May 3, 1957 is an agreement between the Railroad Yardmasters of America and a number 436 of railroads. The period extended from May 3, 1957 to November 1, 1959.

(Counsel for plaintiff, on the basis of the witness' last

answer, moved that the last two exhibits offered in evidence by the defendants be stricken for the reason that the answer purely indicated that the rule which the defendants in the instant case were contending for, being for an eternal period of time, was entirely different from the agreement referred to in the two exhibits which  
437 had a definite termination date. The Court denied the motion.)

438

*Cross-Examination.*

The termination date provided in the agreement of May 3, 1957 is November 1, 1959. That is the same date on which the November 1, 1956 moratorium agreement expires.

439 (It was stipulated by plaintiff that with respect to Defendants' Exhibit No. 18, the circular from the Association of Western Railroads; that the North Western had received a copy of that circular.)

441 (Plaintiff's Exhibit 11 for identification was received in evidence as PLAINTIFF'S EXHIBIT 11.)

442 THEODORE M. VAN PATTEN, called as a witness by the plaintiff, having been first duly sworn, testified in rebuttal as follows:

*Direct Examination.*

My name is Theodore M. Van Patten. I live at 404 East Washington Boulevard, Lombard, Illinois. I am Director of Personnel of the Chicago and North Western Railway. I was the Chicago and North Western Railway Company's representative in the National Mediation Board proceedings E-175 of last week. The mediator of those  
443 proceedings was Mr. Wallace Rupp. I met with Mr. Rupp once in Case E-175 shortly after 2:30 p. m., August

19, 1958, in my office. No one was present but Mr. Rupp and myself.

When we got around to talking about Case E-175 Mr. Rupp asked me if there was any field that I knew of which might form a basis for settlement of the dispute. I told him, yes, I thought there was. I said to Mr. Rupp that without prejudice to my position, regarding the bargainability, I thought there was a possibility of settling the entire question involving the proposed rule and the station agency question on the entire railroad by working out an arrangement whereby the number of layoffs might 444 be slowed down by limiting the number of layoffs per year to an agreed upon percentage of the total number of jobs of the telegraphers over and above the reduction in the number of such employees by attrition.

Mr. Rupp thought for a minute and he said, "You have planted a seed"—as he put it—"and given me something to talk to the organization about."

I cautioned Mr. Rupp that I was not making a formal proposal, although I did give him every reason to believe that I was willing to undertake negotiations along that line.

Mr. Rupp said he understood it was not a formal proposal and stated that that was certainly not the time for formal proposals to be made by either party, but it gave him a thought and gave him something to talk to the organizations' O. R. T. representatives about, and he indicated to me that when he left my office, he was going over—I believe he said to the Congress Hotel—to talk to the O. R. T. committee, and if they were interested, he would call me the following morning.

I told Mr. Rupp I had a rather important meeting at 10 o'clock the following morning, and I would appreciate it if he did call me that he call me either before 10 445 o'clock or after lunch. Mr. Rupp did not call me.

BEN W. HEINEMAN, previously called as a witness on behalf of the plaintiff, having been previously duly sworn, was examined and testified further in rebuttal as follows:

*Direct Examination.*

The custom and practice in the railroad industry concerning the duration of a bargaining agreement is that the agreements are perpetual and must change by mutual consent. By "mutual consent", I mean it requires the consent of both parties. That is certainly the common practice. They have no expiration dates. They could have an expiration date only if both parties agreed to it. The basic agreements have no expiration dates and such dates may be inserted only by mutual agreement. They cannot be inserted unilaterally. In that regard they are different from the customary industrial agreements. The provisions remain frozen in the railroad agreements.

447 Both the Mediation Board and the Railroad Adjustment Board find their origin in the National Railway Labor Act. The Railway Adjustment Board procedure is that of final and compulsory arbitration. The decisions are binding on both parties, both the organization and the carrier, and are not appealable.

The Mediation Board procedure is that of mediation only as distinguished only from arbitration. It has no final effect so far as the parties are concerned, no binding effect upon them. It is intended as persuasion and mediation, which is the best word. Of course, under mediation proceedings under the Act, arbitration may be in order and usually is in cases where the parties are unable to reach agreement. However, if arbitration is not accepted by the parties, the Mediation Board has no power to compel arbitration, so that the essential differ-

ence is that on the disputes which go to the Railway Adjustment Board, which are essentially disputes arising as to certain conditions in a grievance, that is a final compulsory arbitration, whereas mediation procedures, as I say, are those of mediation only, the best offices to persuade the parties and bring peace and agreement.

The class and craft of employees represented by the defendant organization come under the Railroad Un-449 employment Act. The railroad makes payments under the terms of that Act to provide for unemployment for that craft and class of employees. As to how much the North Western Railway pays, in 1957 our payroll taxes for unemployment compensation amounted to \$1,900,-000.00.

456 If the proposed rule had been in effect on the North Western Railroad during the time that railroad was completely dieselized, as I have testified, the North Western would not have been able to dieselize the 457 railroad. If the proposed rule had been in effect on the North Western Railroad, the North Western Railroad would not have been able to consolidate its fourteen points for heavy repair of cars into the one modern shop, about which I have testified, at Clinton, Iowa. The 458 North Western Railroad has pending plans for the installation of centralized traffic control. If the pro-459 posed rule were in effect on the railroad, the North Western would not be able to carry out those plans for centralized traffic control. That is assuming this rule was in effect according to its terms.

460 If the proposed rule were put in effect on the North Western, the North Western would not be able to carry out its plans for modernizing the Proviso Yard into a push button yard. The North Western has a program to improve the protection at grade highway crossings, which is about 75 per cent completed. As to that part of

the program which is completed, the North Western could not have carried it out if the proposed rule had been 461 in effect. The remaining part of that program yet to be done could not be carried out in the face of this rule.

If the rule had been in effect on the North Western, the North Western could not have carried out its mechanization of maintenance of way procedures.

As to the reason I have testified that the North Western could not have made certain modernization improvements in the past and could not make them in the future un- 462 der this proposed rule, these programs of modernizing transportation systems, including the North Western, require capital, and the capital can depreciate—the interest and cost of the money can only be obtained, earned, and the depreciation of the additional capital investment made to modernize can only be amortized through a company savings which one generates by the investment of the capital. This proposed rule, if enforced on the North Western Railroad, would preclude any such savings for all time.

In my opinion, the modernization programs, both those already accomplished, and those proposed, are necessary for the North Western Railroad, and, in my opinion, the railroad industry.

463

*Cross-Examination.*

With respect to the matter of termination dates of railroad collective bargaining agreements, I am aware of the provisions in the Railway Labor Act by which either party can at any time serve a thirty-day notice pursuant to Section 6 for any proposal to revise, modify or terminate any portion of those agreements. As a matter of law, it is correct that after such notice has been progressed to the procedures provided in the Railway Labor Act, and

the terminal point has been reached, if the carrier has made the proposal and the time limitation periods have expired, that the carrier can put that change into effect unilaterally, and the only recourse the employees have 464 is to strike. Depending upon what the issue is, as a practical matter, that has occurred many times on railroads in this country. The railroads, by that process, on a number of occasions, have changed agreements and terminated provisions of agreements.

As to whether the railroads always comply with the final and binding awards of the National Railroad 465 Adjustment Board, they have so far as I know. I don't know what the Fourth Division Award 1158 is. I am familiar with the provisions of the Railway Labor Act that authorize a suit in the Federal District Court to enforce awards if they are not complied with. It has on a number of occasions been necessary for such proceedings to be brought and in general there have also been instances of strike, but not against the North Western Railroad. I don't know of any instances where there have been strikes and threatened strikes over failure of the railroads to put into effect awards of the National Railroad Adjustment Board.

466 When I said "final and binding", I was saying "legally binding or legally final and binding"; as a matter of law, they were obligated to carry it out. It 467 might be in the hands of a receiver and he is not able to carry it out.

468 As to the distinction between classes of disputes that go to the National Railroad Adjustment Board and those to the National Mediation Board, my understanding is that first of all, cases go to the National Railway Adjustment Board arising under the interpretation of agreements dealing with rates of pay, rules and working conditions. In addition, my understanding is that

although Section 5(2), I believe, of the National Railway Labor Act provides that the Mediation Board should interpret mediation agreements, but nevertheless the Mediation Board has consistently, from the time of its establishment, taken the position that it will only interpret executory mediation agreements, and that executed mediation agreements are for the Railway Labor Adjustment Board.

I might add, since you asked me, it is for that reason that in our opinion and in the opinion of many fine lawyers around, the question of Section VI of the mediation agreement, which is the November 1, 1956 agreement, is submitted to the Railway Adjustment Board.

My information that the National Mediation Board has consistently confined its interpretation of mediation agreements to an executory agreement is from the report prepared by the National Mediation Board covering its duty, its functions from 1935 to 1957, which is a green-back report published by the United States Government and readily available.

470 At the conclusion of my direct examination, I answered a series of questions from counsel as to things which the North Western Railroad could not have done or could not do in the future if this proposed rule had been or would be in effect. I am familiar with the provision in the proposed rule which says, "except by  
471 agreement between the carrier and the organization".

As to whether my answers to those questions were predicated upon the assumption that the organization would, under no circumstances or at any time, agree to the discontinuance of a job, my answer was predicated upon the experience that the organizations would not agree to the abolition of jobs except upon their own terms. In short, that they would have a veto power.

472 We have not had any experience with such a rule as this, but we have had considerable experience with

the telegraphers in connection with the modernization of our stations. That is not under any such rule, but under much more favorable rules to the railroad than this. There may have been an isolated case where The Order of Railroad Telegraphers has agreed to a dualization of agencies, I just don't really know.

### Colloquy.

(Portion of the Closing Argument of Counsel for Defendants, Mr. Elson.)

593 "The Act gives the labor organizations, as a matter of fact in the case of individual employees, individual employees, the right to file grievances and go through the Adjustment Board, or an organization can do what this organization has done, which is to attempt not to have to process a lot of grievances. It would take years to process them, but to make a proposal, a specific proposal changing the agreement which would permit—which would eliminate the need for grievances. I don't know whether your Honor is familiar with the conditions involving the Third Division Board, and I hope none of the members of the Board will take offense at what I have to say, but the report of the National Adjustment Board for June 30th of 1957—and I am referring to Page 52—shows that as of July 1, 1956, there were 1,455 cases on hand. During the year they decided 599 cases, and on June 30th they had on hand 1,744 cases, or approximately a back load of three years' work.

"Now, if an organization chooses not to go through the grievance procedure and process individual griev-  
594 ances and wait three years for a decision, but instead to handle the matter by changing the agreement, I say to your Honor that is clearly contemplated by the Act as a right which the organization has, and a right which

cannot be denied to it. As a matter of fact, as far as the Act itself is concerned, if all the Telegraphers did was to confine that Section 6 notice simply to station agents, that would not change the situation, assuming it had been done, assuming that was a Section 6 notice that as to station agents there should not be any change. Under the Act it is perfectly permissible for a labor organization to frame the change it wants in the contract to meet the particular situation it has in mind, if that was the situation. That wasn't the way the issue was framed; it was framed, as your Honor well knows, to cover all positions, not just the station agents alone.

"All I am saying, your Honor, is that there is nothing in the Act, contrary to what counsel says, which would preclude that kind of a Section 6 notice, instead of going through the laborious process of filing grievances, and going through the Adjustment Board."

596 "Now the second episode which was referred to was the testimony of Mr. Van Patten. I have no question, your Honor, that both Mr. Van Patten and Mr. Leighty told the truth when they were on the stand. Mr. Van Patten said he had indicated that there might be a counter-proposal available to the organization. Mr. Leighty testified that no proposal was made, and on this the record is very clear."

### *Opinion of the Court.*

The Court: Gentlemen:

This has been and is an extremely important case, of course; nobody denies that. I think it is also highly technical. But I have spent a lot of time on the matter. I listened to the evidence carefully, much of which, in the strictest sense, probably was not entirely relevant. I rec-

ognize the problem; I recognize that as a society grows the railroad industry develops; that naturally practices change, and there is no question but what the North Western, as many other railroads, has had a number of positions that have been developed, as times have changed, and has been what in railroad and union terms are sometimes referred to as "feather-bedding".

I recognize that has developed there. I heard the testimony concerning the changes that have taken place. It wasn't completely in full. I heard the number of positions that have been changed there. I believe Mr. Heineman testified that it was 26,000, or approximately, and then they were reduced in the two-year period to 18,000. I heard the testimony concerning a lot of other useless expenses, and of course naturally when you curtail activities, some of the income is reduced, but I assume from what the testimony that was presented here, a lot of that income that was reduced was not paying its way, and that it was economically necessary, I believe, as Mr. Heineman said, to quote, "Perform surgery" and apparently that has been done.

We didn't have any evidence introduced here specifically as to how the railroad had been affected. There was no statements of the earnings during that period, no statements of the present financial condition, but I assume from the testimony there that it must be in better financial circumstances considerably. I couldn't tell whether all of these improvements have been made because of the waste that has been eliminated, or whether there was some borrowing and the company had gotten into a stronger position. I didn't get all of those details, but I was interested in them.

The real question, I see it is Number 1, Is this a bargainable proposed rule? That is the heart of it; Number 2, the next thing is, Does this court have jurisdiction to act?

I have followed this evidence through here and I am not going to review it. It is not necessary to review it, because nobody disputes but what the regular proceedings were followed through, that the Telegraphers, through their union representatives, have followed the correct procedure and did serve their strike notices and did perform all of the acts that were required.

I notice here that the National Mediation Board withdrew from further mediations. Then again on August 14, Mr. Thompson of the Board offered the Board's emergency services further, and asked each side to defer its actions. Then after that both sides accepted, and the Mediation Board resumed mediation.

No success was attained, and then on August 20th the Mediation Board withdrew and closed its file. Now meanwhile the strike notices had gone out.

I have here cited this Toledo case. I have read it, and I have just read it again at recess. In that case there was a very similar situation. When the Mediation Board resumed because of the Pearl Harbor Emergency or National catastrophe. They resumed and re-entered the case. However, searching both the lower court record and the higher court record, nowhere do I find that either side accepted. I don't believe that case is controlling. I believe that, from the record here, both sides accepted, and I believe there was renewal, and I believe the thirty-day period starts running here on August 20th and expires on September 19th at midnight, to the best of my record here.

I believe that this court has jurisdiction to restrain the strike during that period of time. I believe this is a bargainable matter. I don't think there is any question about it, in my viewpoint. There is a provision that either of the parties could ask the Mediation Board to make this determination, and that has not been requested by either side, and of course I can't pass on something that is not

presented to me. There is a provision for that, and then the Mediation Board could make a determination. However, I presume that the Mediation Board would not act upon the matter if it didn't consider it within its jurisdiction, and the fact that it has heretofore found that the Section 6 notice was properly processed or "progressed" as it is called here, would indicate to me that they have made some decision on that point, but there is nothing specific.

I don't know what their decision would be. They have not been flatly asked to do it. Technically it may be that they only ruled that the procedure was correct, and they may not have interpreted it. I think they have an obligation to interpret whether or not it is for the Mediation Board.

If they did determine that it was a matter for the Mediation Board, certainly the strike could proceed after the time has expired. On the other hand, if they decided that it was a matter for the Adjustment Board, well I don't know what the situation would be there, but it would present another set of facts. In my judgment there is a bargainable issue here because, in making our financial adjustments, we must take into consideration the rights of the individuals, as well as the rights of the stockholders, and I have considered that. That is a big factor in stabilization of employment, and that is one of the questions that is bargainable.

Now that is my opinion, and I will enter a decree in this matter restraining a strike in this matter until September 19th at midnight at which time I believe my jurisdiction will expire.

I believe I have jurisdiction under the River Road case there, because in my judgment we are still within the thirty-day period. I am finding, as a matter of fact, that there was a resumption of negotiations. I trust, of course,

by that time if no progress has been made, that the Mediation Board will see fit to inform the President, and then, of course, he has the power or the right, if he believes it should be done, to appoint a fact-finding committee.

This is a serious matter, and I must stay within my jurisdiction and my jurisdiction will not extend to granting a permanent injunction on the record here. The findings of fact and conclusions of law, which I direct to be prepared here and presented or proposed, shall also include a finding that this is a major dispute, and not a minor dispute, and that it properly should be submitted to the Mediation Board for further mediation if at all possible, and that it is not a matter to be submitted to the Adjustment Board, because any matter that is submitted there ultimately results in arbitration, and I don't believe that we have reached the state yet, certainly under our statutes, that labor agreements will be settled by arbitration. That is the general outline of my decision in this matter, gentlemen.

Now, I will come to the practical problem. We will need a formal decree, and we will need findings of fact and conclusions of law. If you gentlemen representing the railroad can assure me that the matters will remain in status quo until Monday at 2:00 o'clock, we can have proper decrees entered at that time, and findings of fact in line with what I have suggested. I don't know what your ability is with respect to that. I recognize your position that I am without jurisdiction. However, I revert to Rule 62-C that would give me the right to continue the present restraining order in full force and effect until such time as I could do it.

Now what is your position on that? Otherwise I will just stay right here and we will sit down and draw a decree and findings of fact. It doesn't make a bit of differ-

ence to me. I would just as soon go home, and I guess you folks would, and take it easy, because I find that haste makes waste, and I would rather work it out in sensible time, and let it come ahead say, Monday at two o'clock and give you time to get to your offices and work on it Monday morning, and over the week-end.

Now that is what I would prefer to do, but I am not going to be arbitrary about it.

The Court: I think as far as I am concerned I want a final order and a final decree, and I want the final order to be that that is the limit of my jurisdiction, that I have no jurisdiction to enter a permanent injunction; I have only jurisdiction to limit it to the 19th of September at 12 P. M., after the 30 days of cooling period has expired, the 30 days which I now find began after the resumption of the mediation, because I am finding—and I know both of you will agree with me, both sides, that the evidence is clear that both sides accept mediation again, and since both sides accepted it, I am ruling—I am going to make a finding of fact that that started a new 30-day period. I would say that neither one of you could compel the other to do it; neither could the Board impose a cancellation of your 30-day period on you, but I firmly believe that were you each one resumed mediation with the agreement with the Board, which re-enters the case, I believe that that starts it over, and I believe that I have jurisdiction to do it, and that is going to be my finding of fact. But I want a final decree, and I want one that is appealable. I want a finding of fact that this is bargainable, and I want a finding of fact that it should not go to the Adjustment Board. I believe that that is the proper thing to do, and I want a decree that will be in shape to be presented to the Court of Appeals.

I know I am just a stepping stone, and it is the court really of last resort, unless there is a constitutional question involved.

OFFICE OF THE SECRETARY  
Public Utilities Commission,  
State of South Dakota.

This Certifies, That I have on this 22nd day of August, 1958, compared the hereto attached copy of instrument known as Report and Order in the matter of Rearranging and revising station agency service in South Dakota, by the Chicago and North Western Railway Company, in Public Utilities Commission Docket No. F-2499 with the original now on file with me, as Secretary, and the same is a full, true, correct and identical copy of said original and of every part thereof.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the Public Utilities Commission of the State of South Dakota, at Pierre, the Capital, on this 22nd day of August, 1958.

E. F. Norman,

(Official Seal)      *Secretary, Public Utilities Commission,  
State of South Dakota.*

**PLAINTIFF'S EXHIBIT NO. 2.****BEFORE THE PUBLIC UTILITIES COMMISSION****of the State of South Dakota.**

In the Matter of the Application of  
The Chicago and North Western  
Railway Company for Authority  
to Revise, Adjust and Rearrange  
Its Agency Service in South  
Dakota.

**REPORT.****(F-2499)****Appearances:****On Behalf of Petitioner:**

Warren Newcome, Attorney, 644 Minnesota Building, St. Paul, Minnesota.

F. O. Steadry, Attorney, 400 West Madison Street, Chicago, Illinois.

William S. Churchill, Attorney, N. W. Security National Bank Building, Huron, S. Dak.

**For The Order of Railroad Telegraphers, Protestants:**

Lester P. Schoene, General Counsel, 1625 K Street, N. W., Washington, D. C.

C. O. Griffith, Attorney, 3860 Lindell Blvd., St. Louis, Mo.

R. C. Williamson, 835 Third Avenue, S. E., Cedar Rapids, Iowa.

G. E. Leighty, 3860 Lindell Blvd., St. Louis, Mo.

**Other Appearances in Protest:**

Paul F. Burke, Attorney, Miller, S. Dak., appearing for towns of Hitchcock, Wessington, Bone-steel, Mansfield, Northville and Athol.

Raymond E. Dana, Attorney, 812 National Bank of South Dakota, Sioux Falls, S. Dak., appearing for towns of Hartford, Humboldt and Montrose.

Lester H. Herbrandson, Attorney, Volga, S. Dak., appearing for towns of Volga and Iroquois.

Boyd Nelson, Manager, West South Dakota Traffic Bureau, Rapid City, S. Dak., appearing for the West South Dakota Traffic Bureau.

Vincent J. Protsch, Attorney, Howard, S. Dak., appearing for towns of Carthage and Canova.

Ramon A. Roubideaux, Attorney, Fort Pierre, S. Dak., appearing for town of Fort Pierre.

Harvey A. Gunderson, Attorney, Clear Lake, S. Dak., appearing for towns of Castlewood, Gary and Henry.

Roger C. Lohman, Attorney, Parker, S. Dak., appearing for towns of Parker and Canistota.

Gordon Mydland, Attorney, Brookings, S. Dak., appearing for towns of Turton and Lake Preston.

Herbert A. Heidepriem, Attorney, Miller, S. Dak., appearing for towns of Harrold, Miranda, St. Lawrence, Seneca, Ree Heights, Rockham and Zell.

Irving A. Hinderaker, Attorney, Way-Penney Building, Watertown, S. Dak., appearing for towns of Astoria and Estelline.

H. O. Lund, Attorney, Brookings, S. Dak., appearing for town of Elkton.

G. H. Johnson, Attorney, Gregory, S. Dak., appearing for towns of Dallas and Wood.

James Brennan, Attorney, Rapid City, S. Dak., appearing for towns of Hermosa, Quinn, Oral, Sturgis, Buffalo Gap, Oelrichs, Underwood, Whitewood, Nisland,

Weldmar Weverstead and Donald McMurchie,  
Centerville, S. Dak.

Alvin H. Schulz, Attorney, Brookings, S. Dak.,  
appearing for town of Bruce.

C. M. Baldrige, Chairman, Town Board of North-  
ville, S. Dak.

Earl Bexter, Onida, S. Dak.

Robert Chamberlain, Hecla, S. Dak.

Lloyd Kegler, Athol, S. Dak.

R. C. Stenson, Colome, S. Dak.

Clem Russell, Oral, S. Dak., appearing for Angos-  
tura Irrigation Project.

Ralph Herseth, Houghton, S. Dak.

Fred Hanson, Alcester, S. Dak.

W. H. Preston, Salem, S. Dak.

A. E. Crooks, Frankfort, S. Dak.

John Stahl, Doland, S. Dak.

Melvin Hoppe and Al Keonig, Fairfax, S. Dak.

H. W. Tiahrt, Claude Sherard and Floyd Fleygar,  
Hurley, S. Dak.

Frank Bell, Ferney, S. Dak.

As Employees of the Public Utilities Commission:

Herman L. Bode, Attorney, Pierre, S. Dak.

Elwin Quinney, Engineer, Pierre, S. Dak.

By application filed on the 5th day of November, 1957, the Chicago and North Western Railway Company (hereinafter called Petitioner) seeks authority to close sixty-nine (69) one-man railroad agency stations on its lines in South Dakota, to withdraw the agent thereat and to remove the depot therefrom. As an alternative to such authorization by this Commission, the Petitioner offers and proposes to inaugurate a central agency service by which one station agent, from a central point, would be required

to render agency service at one or more adjacent stations, by traveling by automobile from the central station to the adjacent town or towns, and thus continuing agency service at sixty-eight (68) of the points, from which secession of service is proposed. The stations involved are as follows:

Agar	Farmer	Montrose
Alcester	Ferney	Nisland
Athol	Fort Pierre	Northville
Astoria	Frankfort	Oelrichs
Blunt	Fulton	Onida
Bonesteel	Gary	Oral
Bruce	Groton	Parker
Buffalo Gap	Harrold	Quinn
Burke	Hartford	Raymond
Canistota	Hecla	Ree Heights
Canova	Henry	Rockham
Carthage	Hermosa	St. Lawrence
Castlewood	Herrick	Seneca
Centerville	Hitchcock	Turton
Colome	Houghton	Underwood
Columbia	Humboldt	Valley Springs
Conde	Hurley	Volga
Cottonwood	Iroquois	Wakonda
Dallas	Lake Preston	Wessington
Doland	Lebanon	Whitewood
Elkton	Mansfield	Wolsey
Estelline	Miranda	Wood
Fairfax	Monroe	Zell

The towns at which central agency service is proposed to be established as an alternative to closing are as follows:

Bonesteel	Estelline	Iroquois
Blunt	Groton	Northville
Burke	Hecla	Onida
Centerville	Hermosa	Oral
Doland	Humboldt	Parker
		Wolsey

The proposed central agency plan will result in the following line-up of station agency service:

**Stations in Each Area Involved in the Central Agency Program and the Area Agency Headquarters.**

Athol; Northville; Mansfield—Northville  
Columbia; Houghton; Hecla—Hecla  
Astoria; Ivanhoe, Minn.; Arco, Minn.; Hendricks,  
Minn.—Hendricks, Minn.  
Gary; Burr, Minn.; Canby, Minn.—Canby, Minn.  
Lake Benton; Elkton—Lake Benton, Minn.  
Castlewood; Estelline; Bruce—Estelline  
Arlington; Volga—Arlington  
Turton; Conde; Ferney; Groton—Groton  
Agar; Onida—Onida  
Seneca; Lebanon; Gettysburg—Gettysburg  
Miranda; Rockham; Faulkton—Faulkton  
Zell; Redfield—Redfield  
Frankfort; Raymond; Doland—Doland  
Henry; Clark—Clark  
Hitchcock; Wessington; Wolsey—Wolsey  
St. Lawrence; Miller—Miller  
Ree Heights; Highmore—Highmore  
Harrold; Blunt—Blunt  
Carthage; Iroquois—Iroquois  
Lake Preston; De Smet—De Smet  
Canistota; Canova; Salem—Salem  
Monroe; Hurley; Parker—Parker  
Alcester; Beresford—Beresford  
Wakonda; Centerville—Centerville  
Montrose; Hartford; Humboldt—Humboldt  
Valley Springs; Sioux Falls—Sioux Falls  
Farmer; Spencer—Spencer  
Fulton; Mitchell—Mitchell  
Oelrichs; Oral—Oral  
Buffalo Gap; Hermosa—Hermosa  
Whitewood; Sturgis—Sturgis  
Nisland; Newell—Newell  
Underwood; Wasta—Wasta  
Quinn; Wall—Wall

Cottonwood—(Station to be closed and unassigned)  
Fort Pierre; Pierre—Pierre  
Fairfax; Bonesteel—Bonesteel  
Herrick; Burke—Burke  
Dallas; Gregory—Gregory  
Colome; Wood; Winner—Winner

The petition in this case invokes the authority and duties of this Commission as set out in the following Sections of the South Dakota Statutes:

**Section 52.0932:**

“It shall be unlawful for any railroad company owning or operating, or which may hereafter own or operate, any railroad, in whole or in part, in this state, to abandon any station on its line of railroad when once established, to remove the depot therefrom, or withdraw any agent therefrom without the written consent of the Public Utilities Commission after notice and public hearing and due consideration of all circumstances including the revenue derived by such railroad from the incoming and outgoing business at such station, its expense of maintaining an agent thereat and public convenience and necessity involved.”

**Section 52.0202 (Skeletonized):**

“Whenever in the judgment of such Commission it shall appear that . . . any change of its stations . . . or any change in the mode of operating its line, or lines, or conducting its business is reasonable and expedient in order to promote the security, convenience, and accommodation of the public, the Commission shall inform such common carrier of the improvement or changes which it adjudges to be proper, by notice thereof in writing by leaving or mailing by registered mail a copy thereof, certified by its secretary, to or with any station agent, clerk, treasurer, or any director of such common carrier.”

**Section 52.0310:**

“In any action or proceeding wherein any order of the Public Utilities Commission shall in anywise come

in question, the validity of such order shall be presumed, and it shall not be necessary to allege or prove any fact on which the validity of such order depends, but the burden shall be upon the party claiming such order to be invalid to plead and prove the facts establishing such invalidity."

The broad gauge state-wide scope of this petition directs our attention to, not only the convenience and necessity of the individuals directly concerned at each of the communities involved herein, but also brings into focus the public welfare of a very large segment of the people of South Dakota. It was deemed expedient therefore that the matter be set down for public hearing at Pierre, the Capital, at which time the Petitioner could present its case and the hearing be then adjourned to a later date at which time the transcript of the first hearing could be available to protestants for their use in cross-examination and the presentation of further testimony.

Therefore, on November 5, 1957, the matter was first assigned for hearing to be held at the State House in Pierre, the Capital, on November 25, 1957, at the hour of 9:30 o'clock of the forenoon, at which time and place Petitioner presented its case in principal. On November 26, 1957, the hearing was adjourned to reconvene on December 18, 1957, at which time three days were consumed in the cross-examination of Petitioner's witnesses and the presentation of some protestant testimony. On December 20, 1957, the hearing was adjourned to reconvene for the convenience of protestants at Huron, South Dakota, on January 13, 1958, and at Rapid City, South Dakota, on January 16, 1958, and hearings were finally concluded at Rapid City on January 17, 1958.

The Chicago and North Western Railway Company (including the Chicago, St. Paul, Minneapolis & Omaha Railway Company now under lease) operates, system-wide, a total of 9403 miles of road (single track), of which 1311

miles or 14% is within South Dakota. This 1311 miles of road is 33% of the total mileage of road operated by the nine railroads now operating in South Dakota. It is exceeded only by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company which operates 44% of the total. In 1956 the Chicago and North Western and Omaha moved 421,266,000 ton miles of revenue freight in South Dakota, which was about 21% of the total South Dakota railroad revenue freight, but its operating ratio (operating expenses in percent of operating revenues) was 118% as compared to 93% for all railroad operations in South Dakota.

The evidence shows that Petitioner controls an important segment of our transportation system in South Dakota and that it must improve its operating ratio considerably if such vital segment is to survive.

As of December 31, 1956, the C. & N. W. Railway Company had a capital structure as follows:

Common Stock Outstanding (\$100 stated value) .....	\$ 81,225,400	17.00%
Surplus .....	89,662,908	18.76%
<b>Total Common Equity Capital</b>	<b>\$170,888,308</b>	<b>35.76%</b>
5% Preferred Stock (\$100 Par) ..	91,390,300	19.12%
3% Mortgage Bonds, unmatured	50,592,000	10.59%
4½% Mortgage Bonds, unmatured	67,525,272	14.13%
Equipment Trust Certificates (3.294% Composite) .....	97,506,221	20.40%
<b>Total Long-Term Debt .....</b>	<b>\$215,623,493</b>	<b>45.12%</b>
<b>Total Capital</b>	<b>\$477,902,101</b>	<b>100.00%</b>

The C. & N. W. Railway Company has not paid a dividend on common stock since 1950; it has paid no dividend on preferred stock since 1954; and in 1956 its net income was insufficient to pay all of its fixed charges. On January 17, 1958 (at conclusion of hearings), C. & N. W. Railway Company common stock sold on the New York Stock

Exchange at \$14 per share; its preferred stock sold for \$20; and its 4½% Mortgage Bonds had a market value of about \$45. Obviously, Petitioner must improve its earnings position by operating economies before it can hope to raise any further capital through sale of its securities to the public.

Petitioner's affirmative case is largely devoted to proving the lack of public convenience and necessity. This factor is established by the small amount of time involved in the work of the agent at each of the sixty-nine (69) stations, in which it appears that the workload varies from a minimum of 12 minutes per average working day at Ferney, to a maximum of 2 hours at Onida (Exhibit 5). For the 69 stations this works out to an average workload of 50 minutes for an average working day, per station.

The information on which this, so-called workload, is based was obtained from a survey of the various station activities conducted during the summer of 1957. The survey was made by teams of traveling auditors who went to each station to check the number of units of work and other station activities relating thereto. In this survey a unit of work represents the handling of one shipment, either carload or less than carload, either incoming or outgoing; the handling of one reconsigning order; the preparation of a demurrage bill; the payment or collection of each C.O.D. charge; one interchange report; the sale of one ticket; the handling of one milk or cream can; the handling of one express shipment; the handling of one telegram; the making of one report, and such other things that are done at a railroad station. The total of these work units for each station for the years 1956 and 1951 were then compiled in the general accounting office and the average number of work units per working day was computed for each station involved. Then these traveling auditors, and other experienced employees in the accounting office, unanimously

agreed that fifteen (15) minutes was sufficient (or more than sufficient) time for an agent to perform or handle each of these units on an average, and this assumption was concurred in by the executive department. The workload for each station was then determined by multiplying the average number of work units per working day for each station by 15 minutes and thus finding the average station workload per working day in hours and minutes (Exhibit 11). The men that made this survey, and estimated the time consumed, are long-time employees of the company, all of which had had previous station agent experience, and we believe the method herein devised gives a fair picture of the relative amount of work actually required of an agent at each of the 69 stations involved. The time required by an agent at a station to perform the agency service necessary thereat is an important and relevant factor in determining and measuring the public convenience and necessity for the service and will be given due consideration in our deliberations in this case.

The rendition of agency service in connection with the transportation of passengers and property by a railroad is, where needed necessary to constitute adequate service for the accommodation and convenience of the public, hence we are confronted in this case with rendering a decision on the following basic issues:

1. Does the record require the closing, the withdrawal of agency service, and the removal of the station buildings at the 69 stations involved in this proceeding?

2. Does the central agency service proposed in Petitioner's agency plan under which agency service will be continued at each of sixty-eight (68) stations constitute an abandonment of the station, or withdrawal of an agent as contemplated by Section 52.0932 of the South Dakota Code?

3. Does the failure of the Petitioner to assign the small amount of work at two or more stations to one central agent constitute inefficient and uneconomical management of its transportation operations, and is it the duty of this Commission to issue a service order requiring Petitioner so to do, thus avoiding at many of the stations the abandonment thereof?

1. Complete Abandonment of Agency Stations.

Section 52,0932 of the South Dakota Code directs this Commission to consider, in a station closing case, the following relevant factors:

The revenue derived by the railroad from incoming and outgoing business at each station.

The expense of maintaining an agent thereat.

Public Convenience and Necessity.

The total estimated revenues derived by Petitioner from all incoming and outgoing business, assignable to the 69 stations involved in this case, is shown (Exhibit 66) to be \$1,854,420 for the year 1956. Ninety-two percent of this amount (or \$1,706,066) was consumed in paying operating expenses other than station expense, leaving a balance of \$148,354 for direct station expense. The total station expense of operating these 69 stations, including agent's wages, depot maintenance, heat, light, telephone, ect., was \$318,723, or \$170,369 deficit. Had the proposed central agency plan been in effect for 1956, with agents at only 16 of the 69 stations, thus eliminating the station expense at 53 stations, this station expense would have been reduced by \$229,253, or to a total of \$89,470, leaving a balance of \$58,884 for surplus.

All of the 69 stations, with the exception of Dallas, Fort Pierre, Frankfort and Onida, show a corresponding deficit as set out below:

	Total Revenues Derived	Expense Other Than Station Expense	Balance Remaining	Station Expense	Deficit or Surplus
Agar .....	\$ 40,455	\$ 42,739	\$ 3,716	\$ 4,483	( \$ 767)
Alcester .....	14,838	13,651	1,187	4,833	( 3,646)
Athol .....	20,114	18,505	1,609	4,322	( 2,713)
Astoria .....	12,245	11,265	980	4,460	( 3,480)
Blunt* .....	38,078	35,032	3,046	5,702	( 2,656)
Bonesteel* .....	4,401	4,049	352	5,448	( 5,096)
Bruce .....	25,984	23,629	2,355	4,858	( 2,503)
Buffalo Gap .....	13,626	12,536	1,090	4,821	( 3,731)
Burke* .....	18,437	16,962	1,475	4,894	( 3,419)
Canistota .....	13,060	12,021	1,045	4,708	( 3,663)
Canova .....	12,721	11,703	1,018	4,876	( 3,858)
Carthage .....	23,511	21,630	1,881	4,806	( 2,925)
Castlewood .....	30,750	28,290	2,460	4,666	( 2,206)
Centerville* .....	42,007	38,846	3,361	5,251	( 1,890)
Colo. re .....	17,778	16,356	1,422	4,614	( 3,192)
Columbia .....	48,488	44,609	3,879	4,602	( 723)
Conde .....	4,036	3,713	323	4,352	( 4,029)
Cottonwood .....	5,166	4,753	413	1,800	( 1,387)
Dallas .....	114,490	105,330	9,159	4,631	4,520
Doland* .....	46,690	42,955	3,735	4,507	( 772)
Elkton .....	8,904	8,192	712	4,773	( 4,061)
Estelline* .....	46,697	42,961	3,736	4,628	( 892)
Fairfax .....	3,459	3,182	277	4,504	( 4,227)
Farmer .....	12,455	5,541	996	4,190	( 3,194)
Ferney .....	30,208	27,791	2,417	4,317	( 1,900)
Fort Pierre .....	87,119	80,149	6,970	4,859	2,111
Frankfort .....	64,272	59,130	5,142	4,569	573
Fulton .....	23,554	21,670	1,884	4,403	( 2,519)
Gary .....	14,087	12,962	1,127	4,560	( 3,433)
Groton .....	34,471	31,713	2,758	4,689	( 1,931)
Harrold .....	17,708	16,291	1,417	5,422	( 4,005)
Hartford .....	30,884	28,413	2,471	4,646	( 2,175)
Hecla* .....	51,875	47,725	4,150	4,615	( 465)
Henry .....	24,511	22,550	1,961	4,502	( 2,541)
Hermosa* .....	11,838	10,891	947	4,466	( 3,519)
Herrick .....	8,192	7,537	655	4,647	( 3,992)
Hitchcock .....	53,104	48,856	4,248	4,608	( 360)
Houghton .....	43,190	39,743	3,456	4,564	( 1,108)
Humboldt* .....	12,712	11,695	1,017	4,553	( 3,536)
Hurley .....	14,024	12,902	1,122	4,827	( 3,705)
Iroquois .....	36,421	33,511	2,914	5,270	( 2,356)
Lake Preston .....	15,687	14,432	1,255	4,828	( 3,573)
Lebanon .....	10,983	10,104	879	4,589	( 3,710)
Mansfield .....	19,335	17,788	1,597	4,423	( 2,876)
Miranda .....	23,599	21,674	1,885	4,303	( 2,418)
Monroe .....	7,762	7,141	621	4,639	( 4,018)
Montrose .....	23,357	21,488	1,869	4,455	( 2,586)
Nisland .....	30,442	28,007	2,435	4,816	( 2,388)
Northville* .....	38,302	35,238	3,064	4,598	( 1,534)
Oelrichs .....	23,050	21,206	1,844	4,775	( 2,931)
Onida* .....	123,381	113,511	9,870	4,648	5,222

\* Indicates proposed Central Agency. ( ) Indicates Deficit.

	Total Revenues Derived	Expense Other Than Station Expense	Balance Remaining	Station Expense	Deficit or Surplus
Oral* .....	23,933	22,018	1,915	4,459	( 2,544)
Parker* .....	10,895	10,023	872	4,774	( 3,902)
Quinn .....	9,800	9,016	784	4,084	( 3,300)
Raymond .....	51,020	46,938	4,082	4,469	( 387)
Ree Heights .....	11,523	10,601	922	4,608	( 3,686)
Rockham .....	17,147	15,775	1,372	4,493	( 3,121)
St. Lawrence .....	14,193	13,059	1,136	4,350	( 3,214)
Seneca .....	25,659	23,606	2,053	4,622	( 2,569)
Turton .....	30,026	27,624	2,402	4,363	( 1,961)
Underwood .....	20,924	19,250	1,674	4,356	( 2,682)
Valley Springs .....	8,193	5,698	495	4,417	( 3,922)
Volga .....	31,343	28,836	2,507	4,965	( 2,458)
Wakonda .....	8,542	7,859	683	4,473	( 3,790)
Wesalington .....	25,596	23,548	2,048	4,729	( 2,681)
Whitewood .....	6,106	5,618	488	5,790	( 5,302)
Wolsey* .....	7,665	7,052	613	4,971	( 4,358)
Wood .....	23,685	21,790	1,895	4,313	( 2,418)
Zell .....	32,029	29,467	2,562	4,163	( 1,601)
Totals .....	\$1,854,420	\$1,706,066	\$146,354	\$318,723	(\$170,369)

In determining the need of agency service, the amount of revenue derived from carload freight is not a controlling factor, since it is now generally recognized that carload shipments may be handled without a full-time or resident agent at each station, with very little inconvenience to the individual shipper, and no loss to the general public. At a closed station the same trains continue to run. Passengers (if any) can board the trains. Cars for outgoing shipments can be ordered by telephone at no expense to the shipper. Cars can be loaded and the bill left at a prearranged place for the conductor to pick up. The consignee will be notified of incoming shipments, but such shipments will have to be prepaid unless the customer can make satisfactory credit arrangements with the railroad company, which can be done in the case of most all carload shippers in this area. We are sustained in this view by numerous rulings from other state jurisdictions:

"It appears from all of the testimony taken before the State Corporation Commission (New Mexico)

that all carload business can, without inconvenience of any considerable amount, be handled without a station agent. It is only the less than carload business that requires a station agent so that shipments of goods can be made to or from the station without prepaying the freight." (New Mexico Supreme Court in *Re Denver & Rio Grande R. R. C.*—9 P. 2d, (140).)

"\* \* \* that for the purpose of this discussion, the revenues from carload freight is not to be considered, because an agent is not needed for carload freight, and \$1900.07 of said \$2800.47 was from carload freight, and only \$95.52 from less than carload shipments, and \$891.40 from passengers; \* \* \* The financial showing made by the company appeals strongly to the judicial mind. Railroads have to operate as economically as possible in times like these, and not increase expenses by extending facilities which heretofore have not been found indispensable." (Supreme Court of Louisiana in *Louisiana Railway & Navigation Company v. Railroad Commission of Louisiana*, 0 83 So., 849.)

"It will be borne in mind that the discontinuance of an agency does not discontinue the service of the railroad company at that point. The same trains continue to run and both freight and passengers may be transported to and from the station in question, \* \* \* but it appears to be recognized that carload shipments may be handled without an agent with much less inconvenience than smaller shipments, although affording much greater freight revenue." (Supreme Court of South Carolina in *Southern Railway Company v. Public Service Commission*—10 SE 2d, 776.)

"So far as we know this is the first time this court has been called upon to decide the question of the removal of a station agent not in connection with the closing of the station or the reduction of train service \* \* \*. There is no necessity for an agent to handle this (carload) business \* \* \*. The convenience here is to individuals and not to the public. The convenience and necessity required are those of the public and not of an individual or individuals." (Alabama Supreme Court in *Alabama Public Service Commission v. Western Railway of Alabama*—15 PUR 3d, 524.)

The total gross tariff charges, other than that derived from carload business, from these 69 stations amounted to \$71,738 for the year 1956 (Exhibit 60). This represents gross charges before interline settlements with other railroads. The maximum for any one station was \$3,047 at Burke, where the agent's wages were \$4,526, and the minimum was at Cottonwood, in the amount of \$77, where the agent's wages were \$1,774. At none of these 69 stations did the revenue (other than carload freight) equal the agent's wages. The agent's wages exceeded such revenue by about 25 times at Ferney as a maximum, to 1½ times at Burke as a minimum.

Relatively few people have occasion to personally contact the agent at these 69 stations involved herein. Usually there are only one or two principal shippers at each station. There is a noticeable trend in the opposition testimony in this case to indicate that a personal, or community pride is at stake rather than a strict consideration of public convenience and necessity. A sample of this is the following excerpts from the transcript:

Q. And your interest in having an agent is to be able to order cars through him and have him sign your bills of lading?

A. Yes sir—and to keep our town alive. (Tr. 504.)

Q. Tell us something about your agent, and all that you know.

A. Oh— Our agent there, he's a swell guy; everybody likes him; and he's on the job. I know we would sure hate to lose him. (Tr. 465.)

Not all of the testimony was to this end. Many witnesses really believed that they would be inconvenienced by the withdrawal of a full-time agent. But here again most of such testimony was concerned with individual inconvenience more than actual public convenience and necessity.

The New Mexico Supreme Court in *Denton Bros. v.*

*A. T. & S. F. Ry. Co.* (277 P. 36) had this to say in regard to a similar situation:

"It is perfectly natural that every community should aspire to the best railroad service to be had. We have full sympathy with such aspirations. Yet it is to be remembered that, under our system of public control of rates and services, the general public, speaking broadly, loses in cost what it gains in service. So the railroad in resisting demands for uneconomical service, really represents the true interest of the general public."

Another type of testimony which is conspicuous by its absence in this case is that of the large grain companies operating in the state. The Peavey Elevators, operating 49 elevators in South Dakota, have 19 of them located at 14 of the stations involved herein. The Sexauer Company, operating 26 elevators in the state, have 11 of them in 8 of these towns. The Tri-State Milling Company have 7 elevators in 6 of these towns. No one representing any of these important shippers appeared or offered any opposition to the application.

The record discloses (Page 188 Tr.) due to the period of on-duty time (union rules) fixed for an agent at one-man stations, being from 8:30 a. m. with eight hours continuous service, five days per week, that at many of the stations when really needed, the agent is not on duty when the train arrives and departs from the station. At 55 of the subject stations, there are no scheduled passenger trains serving the station. Train schedules ordinarily embrace the full period of 24 hours per day. Freight train service is maintained by-weekly at 25 of the stations.

The Commission at this time finds it unnecessary to decide whether to issue an order authorizing the closing and abandonment of the subject stations in that the effectuation of the central agency plan herein approved and ordered into effect will obviate so doing. The four hear-

ings held after due notice at three points in South Dakota, embracing 2054 pages of transcript, 79 Exhibits, plus oral argument have afforded a full hearing to all parties in interest. Savings from more economical operation of the railroad will react to the benefit of the general public in improved rates and service, and is in the public interest.

2. Central Agency Plan is Not Station Abandonment.

Abandonment of a station involves the withdrawal of the agent thereat, striking the station from the carrier's tariffs, removal of the depot building, and making no provision for the receipt or delivery of shipments at such point. The central agency plan proposed, in which two or more stations will be served by one agent, and by carrying the station in its tariffs, retaining the depot, and rendering central agency service for the receipt, dispatch and delivery of carload shipments, with less than carload shipments handled at the central station only, obviously does not constitute the abandonment of the station, or withdrawal of an agent therefrom, within the contemplation and meaning of Section 52.0932 of the South Dakota Code. The only change which central agency service contemplates is that the agent, whose service area is now confined to the immediate area surrounding one station, will have that area extended to include one or more adjacent stations, and less than carload shipments will be received and dispatched from the designated central agency station.

3. Is a Change in Conducting Petitioner's Business Reasonable and Expedient in Order to Promote the Convenience, Security and Accommodation of the Public?

Section 52.0202 South Dakota Code, supra, makes it the duty of the railroad company to conduct its business in such a manner as to promote the security, convenience and accommodation of the public. However, even without statutory direction, a railroad company owes a duty to

render adequate public service and to charge reasonable rates, and such duty arises from the nature of its business, and statutes so providing are merely declaratory of the common law. When wasteful practices and uneconomical and inefficient management causes a carrier to place itself in a condition which retards, or renders itself impotent to discharge these public obligations, it becomes the duty of this Commission to order and direct a correction thereof. The carrier cannot absolve itself from these public duties as a utility by asserting or excusing financial losses, due to improvident contracts, harmful to the public, with its employees or organizations thereof.

The record indicates that under the contract this Petitioner has with the Order of Railroad Telegraphers, where an agent is assigned to more than one station, he is required to be paid a full agent's salary at each additional station assigned to him without regard to the amount of work or the public need for such service. (We have examined these contracts, filed in this case as Exhibits 78 and 79, and fail to find any specific provision to the effect that a station agent's service area cannot be expanded to include one or more adjacent station areas. However, it is not within our jurisdiction to interpret these contracts.) In any case, this feature of the contract (if there be such) by reason of Petitioner's poor financial status, embraces its capacity to perform its public duties as a utility. A railroad has but one source of revenue and that is the rates charged for its service. Its rates must be reasonable. Reasonable rates cannot be realized when revenues are improvidently spent, even according to contracts with private parties or with its employees. Any contract made by a utility with its employees, when the terms thereof conflict with the public interests, are subject to the rights of the public. We believe there exists a conflict between the right of the public to reasonable transportation rates

and the rights of the parties under the contract entered into between the Petitioner and the Order of Railroad Telegraphers. A utility cannot, by private contract, displace and destroy the Commission's jurisdiction and statutory duties. To the extent that the Commission has jurisdiction over adequate rail service, an indispensable necessity in this state, our order directing the elimination of this feature of the contract will have the effect of releasing the Petitioner from its performance. This conclusion is supported by the decision of the Supreme Court of Colorado in *Denver & Salt Lake Ry. Co. v. St. Clair et al.* (28 p. 2d. 341) from which we quote:

"Contracts like the one before us are subject to the rights of the public; the contract involved in this suit, therefore, obligated the company and its successor, the defendant, 'to maintain a station' at the place designated unless and until the public interest requires its abolition or removal. In *Atlanta & West Point R. R. Co. v. Camp*, 130 Ga. 1, 60 SE 177, 15 L. R. A. (N. S.) 594, 124 Am. St. Rep. 151, 14 Ann. Cas. 439, the court thus stated the law that is applicable to this case: ' \* \* When one contracts with a railroad company in reference to those matters where the public is involved, the contract is made subject to the rights of the public, and, when the exigencies of the business of the company are such that the rights of the public come in conflict with the rights of the contracting party under his contract, it is to be presumed that it was the intention of the parties that the private rights under the contract should yield to the public right. In applying what has been said to the present case, it cannot be held that the contract between the railroad company and the plaintiff was void per se, for the company has a right to make a contract with the plaintiff to locate a station at a given point, so long as the location of the station did not interfere with the proper discharge of the duties resting upon the company as a quasi public corporation; but the plaintiff was charged with notice of the character of

the person he was contracting with and the duties which that person owed to the public, and also, in reference to the subject matter of the contract, that it was connected intimately with the discharge of the duties the defendant owed the public, and therefore it became a part of the contract between the parties that the maintenance of the station at the point was limited, not by the time specified in the contract, but to that time, and to that time only, when, consistently with the discharge of the public duties of the company, the station could be maintained in the manner provided for in the agreement."

"When the public interest requires it, the station at Tolland may be abandoned, notwithstanding the contract, the United States Supreme Court said in *Manigault v. Springs*, 199 U. S. 473, 480, 26 S. Ct. 127 130, 50 L. Ed. 247; "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected." "

See also Supreme Court of Appeals of Virginia in *Atlantic Coast Line R. R. Co. v. Commonwealth et al. State Corporation Commission*—(61 SE 2d, 5).

The situation in this case clearly justifies the issuance of a service order by this Commission directing the officers and managers of Petitioner to effectuate all economy possible in the operation of the railroad, including the inauguration of the central agency plan proposed.

We find:

1. That the revenue derived at the subject stations is obtained almost entirely from carload traffic which can be handled without material inconvenience by central agency service to the small number of carload shippers using rail service thereat.

2. That the less carload traffic for which agency service is most needed is a small volume, and the public has made

little use of less carload service at these stations, and the revenue derived therefrom is a very insignificant portion of the total revenue realized. The evidence submitted clearly proves that public convenience and necessity permits the withdrawal of agency service for less carload traffic at all the subject stations, not designated as area agency headquarters.

3. That the agent's work load as shown by statistics of record at subject stations varies from 12 minutes per day at Farmer to 2 hours per day at Oida, with an average work load of 50 minutes per station at the 69 subject stations.

4. That the maintenance of full-time agency service of 8 hours per day, 5 days a week, at full time pay is not required by public convenience and necessity at each one of the subject railroad stations and part-time service will avoid closing the stations completely.

5. That the maintenance of full-time agency service at all of the subject stations, because of the lack of public need constitutes mismanagement and a dissipation of carrier's revenues which has and will impair its capacity to render adequate rail service to the public at reasonable rates, and that an order be forthwith issued that the proposed central agency plan be effectuated.

6. That the provisions of the existing contract with the Telegraphers Union that an agent must be paid for full-time without regard to the amount of work at a station, and that an agent must be employed full-time at each small open station and receive full-time pay is in direct conflict with the public interest, the public duty of the railroad, and is not binding upon this Commission.

7. That the applicant be directed and ordered to eliminate the wasteful expenditure of its revenues in maintaining at each of said stations an unneeded full-time agent at full-time pay under the terms of said contract with the Telegraphers Union.

8. That the central agency plan proposed by applicant be approved and an order issued directing applicant to put into effect such plan under which one agent at one agent's salary perform the agency service at two or more of the subject stations, and that less carload traffic be handled at a centrally located station.

9. That the business now being handled at Cottenwood, South Dakota, no longer requires the maintenance of an open station thereat even on a central agency basis, and that the agent be withdrawn therefrom and the station closed.

10. That the issuance of any order of consent by the Commission, permitting the applicant to close and discontinue agency service at the subject stations, (except Cottonwood) be held in abeyance subject to the further order of the Commission, awaiting the effectuation of a central agency plan under which part-time agency service will be continued at all the subject stations, (except Cottonwood).

11. That the final action on the petition, requesting written consent to wholly discontinue agency service, remove the station buildings therefrom and striking the stations from the carrier's tariffs, be deferred, subject to the further order of the Commission, for a period of 120 days from the date thereof, at which time applicant be directed and requested to submit to the Commission a report of the progress being made to centralize agency service, and install part-time agency service at all of the subject stations involved in this proceeding. Such central agency service to be established at the stations as outlined in Exhibit 10, and in this report.

Let an order be so entered.

Dated at Pierre, South Dakota, this ninth day of May, 1958.

By Order of the Commission:

E. F. Norman,

*Secretary.*

(Official Seal)

At A Regular Session of the Public Utilities Commission of the State of South Dakota, held in its offices, in the City of Pierre, the Capital, this ninth day of May, 1958.

Present: Commissioners Doherty, Lindekugel and Merkle.

(Merkle dissents.)

In the Matter of the Application of  
The Chicago and North Western  
Railway Company for Authority  
to Revise, Adjust and Rearrange  
Its Agency Service in South  
Dakota.

ORDER (F-2499).

On this date the Commission having completed its investigation and made and filed its report containing its findings of fact and conclusions thereon, a copy of which is hereto attached and made a part hereof, and the Commission being fully advised in the premises and sufficient cause for this order appearing; it is

Ordered, that the Chicago and North Western Railway Company be, and it is hereby, authorized and directed to forthwith inaugurate and put into effect its proposed central agency station plan embracing 68 stations as outlined in the report whereby one station agent, at one agent's wages, may perform the agency service at two or more adjacent stations, and that less than carload traffic be handled at the designated central agency stations only.

Ordered Further, that the Chicago and North Western Railway Company be, and it is hereby, authorized to withdraw its agent and close the station at Cottonwood, South Dakota.

Ordered Further, that the Chicago and North Western Railway Company's request for authority to eliminate agency service entirely and remove the depots from the other sixty-eight (68) stations involved in this proceeding be deferred, subject to further order of the Commission, for a period of 120 days from the date hereof, at which time it is requested and directed to submit to the Commission a report of the progress being made in inaugurating its plan for central agency service.

By Order of the Commission,

E. F. Norman,

*Secretary.*

(Official Seal)

Commissioner Chris A. Merkle Dissents.

I dissent from the findings, conclusions and order of the Commission. The application of the Chicago and North Western Railway Company should be denied, both because it is of such a nature as to be beyond our statutory power to consider and, secondly, because it is lacking in merit.

The applicant has presented its application and evidence in support thereof seeking consideration of its proposal to eliminate agency service and to remove the depot and other facilities at each of the 69 stations involved, and its alternative proposal for central agency service, on a state-wide basis. It has not treated, and the Commission was not asked to treat the application, as a series of applications with respect to each station individually. This is apparent from the application itself and was made explicit by the testimony of the applicant's chairman and chief executive officer (Tr. 51) and is emphasized by applicant's counsel in oral argument and brief filed at the time of oral argument.

The several protestants have raised a number of legal questions which they contend require, as a matter of law,

that all relief sought in the application be denied. These protestants assert that the very nature of the application and the consequent nature of the proceedings thereon are such as to exceed our statutory authority and limitations to consider. They point out that under SDC 52.0932, as amended, a railroad company is first of all prohibited from abandoning any station on its line of railroad when once established or to remove the depot or to withdraw any station agent therefrom. Protestants point out further that the Commission is then given defined authority to relax this prohibition by granting written consent after hearing and consideration of all the circumstances with respect to any particular station. Protestants claim that the statutory specification that the Commission must consider all the circumstances including the revenue derived by such railroad "from the incoming and outgoing business at such station," the railroad's expense of maintaining "an agent thereat," and public convenience and necessity involved, clearly indicate that our statutory authority is limited to considering applications for the abandonment of stations or the withdrawal of agency service on an individual basis only.

The protestants further contend that even if we have legal authority to entertain an application of the type here presented, it is nevertheless of such a nature as to render it impossible on any reasonable and practicable basis to hold the type of a hearing that the statute makes prerequisite to granting consent to the closing of the stations. Here again protestants point out the statutory language and argue that it clearly contemplates a hearing at or in the immediate vicinity of each individual station, so that all members of the community served by the station will be assured adequate opportunity to appear and make their service needs known and so as to permit consideration of the public convenience and necessity involved in continued

agency service or the abandonment thereof in connection with each individual station on its own merits and not primarily in relation to a state-wide or system-wide program.

Protestants further contend that the statutory requirement that we consider "the revenue derived by such railroad from the incoming and outgoing business at such station" requires the applicant to produce evidence showing the gross income to the railroad at the station, i.e., gross tariff charges minus the proportion of such charges accruing to other railroads through interline divisions. This, say protestants, has not been done. Applicant Exhibit 60 shows gross tariff charges collected at each of these stations for the year 1956 totaling \$8,027,606.00. Corresponding information for the years 1955 and 1957 (upon the request by protestants and resisted by applicant) was furnished after the hearing. The protestants, however, point out that this information does not show what the applicant's proportion of the gross revenue received was at each of the individual stations. Exhibit 66, on the other hand, which purports to give some data as to interline divisions, represents an allocation made on some accounting basis contrary to SDC 52.0932 that still does not provide the evidence which the protestants claim we are required, by the statute, to consider.

Protestants make yet another legal contention. They say that in many instances there is such a violent fluctuation in the gross tariff charges received for 1955, 1956 and 1957 that it is impossible to determine from the evidence submitted, on an individual station basis, which of the years, if any, is typical as to any particular station. There is evidence in this record that drought conditions in certain parts of the state and elsewhere in some years and abnormal situations due to wet weather in some parts of the state in some years, and other abnormal situations,

have operated to distort the revenue picture at particular stations in particular years. Consequently, the protestants argue that even if gross tariff charges (revenue) are the proper measure of station revenues, it is nevertheless impossible on this record to determine which years' revenue figures properly reflect the true revenue producing capacity at any particular station. Protestants further say and contend that perhaps the average railroad revenue for a series of years combined would be more accurate, rather than to just rely upon just one year's showing.

I am in accord with these contentions. If any one of them is valid, as I believe them to be, we are required by law to deny the application regardless of any other considerations. But even if it be assumed that I am wrong as to all of them, the record surely requires that the application be denied on its merits.

The applicant contends that station revenues are not necessarily a measure of the need of agency service. This is of course true. Station revenue is nevertheless one of the very important elements that the Commission is bound and must consider. We as a Commission are required by law (SDC 52.0932 as amended) to consider "all the circumstances." Among these circumstances, however, which the statute specifically requires us to consider is "the revenue derived by the railroad from the incoming and outgoing business and its expense of maintaining an agent" at the station. I repeat, consideration of the revenue derived in relation to the expense involved is one main and outstanding indication of the reasonableness of requiring the continuance of agency service or permitting its abandonment when considered together with the function performed by agency service. The ultimate conclusion must depend upon a balance of all the circumstances in arriving at a final judgment as to what public convenience and necessity requires or permits. My conclusion is based upon such considerations.

The evidence shows, and applicant contends, that the principal expense involved in maintaining agency service is the salary of the agent. These salaries vary somewhat between stations. The other expenses, heat, light, telephone, etc., are in any event relatively small at any station. For purposes of general consideration, the expense of maintaining agency service at the stations here involved (See Exhibit 10) may be considered to be in the neighborhood of \$5,000.00 per year. If the applicant's alternative proposal of so called central agency service were to be put into effect, its total savings would not be 69 times \$5,000.00, as there would be 16 agents and agencies retained and certain new expenses incurred. Applicant estimates its total savings, under those circumstances, to be about \$250,000.00 per year.

On the revenue side of the picture, according to this record, some of the individual stations here involved have produced annual revenue far in excess of the total savings attributed to the central agency plan in the entire state. Dallas, for instance, in 1957 produced revenues of nearly \$320,000.00. Onida in 1956 produced revenues of over \$267,000.00. Even Fort Pierre station in 1956 grossed almost \$195,000.00 and in 1957 Fort Pierre showed a gross of \$220,224.00. (See Exhibit 64). In 1956 ten of the 69 stations had revenues of over \$100,000.00, and 24 of the stations had revenues ranging from and between \$50,000 and \$100,000.

Looking at the lower end of the revenue scale, in 1956 the only three stations, Whitewood, Fairfax and Conde, had revenues of less than \$10,000. Two of these, Fairfax and Conde, each had revenues of over \$25,000 in 1955. Whitewood's revenue in 1957 was over \$12,000. There is thus no station in the 69 whose revenues did not exceed \$10,000 in at least one of the 3 years.

In addition to the 3 stations just discussed, there are

only 3 more whose revenues in 1956 were under \$15,000, Cottonwood, Wolsey and Valley Springs. The revenues in each of these 3 stations, for 1955, exceeded \$15,000.

In addition to the 6 stations already discussed above, only 4 more had revenues in 1956 of under \$20,000, Herrick, Monroe, Bonesteel and Quinn. Of these, all but Monroe substantially exceeded \$20,000 in 1955, Bonesteel exceeding \$55,000.

Stations not above discussed or mentioned had in 1956 revenues ranging from \$20,000 to \$50,000. Many showed substantially larger revenues in 1957 than in 1956; particularly notable are the increase at St. Lawrence from \$30,000 in 1956 to about \$80,000 in 1957. The increase at Harrold went from \$33,000 in 1956 to about \$100,000 in 1957.

Based upon these considerations, the relationship between station revenues and station expenses, it can certainly not be said to be unreasonable to require the continuance of agency service at most, if not all, of these stations if its continuance serves the public convenience and necessity. Besides the legal question here involved, the record leaves me in no doubt that public convenience and necessity require the continuance of this station agency service. A great variety of evidence was introduced at the hearing from shippers, consignees, and other businessmen and women, including civic representatives, all indicating that the service rendered to the public would be seriously impaired if this agency service were discontinued or the central agency plan put into effect. In the case of some of the witnesses the evidence merely indicated that shippers or consignees would be greatly inconvenienced by having the quality of their station agency reduced or cut out entirely. In many other instances, however, the testimony shows that businesses served by the applicant would be adversely affected, business and property values reduced,

and investments made in a community affected by the proposed plan impaired. Some witnesses indicated that their entire community might well dry up if this petition is granted.

The applicant expresses a definite preference for the institution of its central agency plan as against the closing of all stations. The application, however, is for an order of the Commission and authority to close all of the 69 stations in the first instance, with alternative permission to institute the central agency plan is found feasible with 30 days (120 days as now ordered in the majority decision herein) after authority to close is granted. The applicant admits frankly that its agreements now in full force and effect with the Order of Railroad Telegraphers, the collective bargaining agency and representative of the 69 agents here involved, and one of the protestants herein, do not permit it to introduce the central agency plan without securing revision of these labor union agreements. The testimony of the president of that organization, a Mr. G. E. Leighty, indicated that such revision of agreements with respect to the dualization of particular stations have some times been negotiated between individual railroads and the system committee representing the employees on such a railroad if investigation of conditions at the particular stations involved showed that the business done at the stations did not warrant the maintenance of full time agency service and one agent could service two stations, by spending about half of his time at each station daily, without undue hardship and under proper rates of pay and working conditions and without harm to the public interest. Leighty further testified, however, that wholesale dualization of stations doing volumes of business, such as is conducted at the bulk of these South Dakota stations, had never been agreed to, thus indicating a strong probability that the applicant would not find it feasible

to put the central agency plan into effect after authority to close these stations is actually granted, as now appears the case from the above order of Commissioners Doherty and Lindekugel. The improbability of the central agency plan being put into effect is further emphasized by the fact that at no time before or during the pendency of this proceeding has any representative of the applicant railroad company made any contact with any representatives of the Order of Railroad Telegraphers with a view to negotiate the necessary agreement revision. This circumstance, if it does not impair the good faith of the applicant's proposal, at least suggests that its purpose is to use the instrumentality of a Commission station closing order as a coercive device in negotiations with the Order of Railroad Telegraphers until such revision of agreements has been obtained. I do not feel that this Commission, or any regulatory commission, can with propriety lend the authority of the Commission to that end, either as it applies to a railroad or to any other public utility under Commission regulatory jurisdiction.

Applicant says that the savings to be derived from its proposed program of curtailing agency service will be devoted to better maintenance of branch rail lines and even main lines, better upkeep of box cars and the building of new box cars, etc., will all result in improvements of service to shippers located on branch lines and even on main lines. I am not convinced that these claims are valid. We have no way of being assured that the net gains, if any, to the applicant company derived from the proposed reduction of station agency service will be used for these purposes. The estimated gains, if fully realized, are admittedly trifling in comparison with the requirements for better maintenance of road and equipment and service. This record is replete with testimony as to the inadequacy of rail service being rendered by the Chicago

& North Western Railroad Company on its South Dakota branch lines and even on its main lines. Protestants say better and more reliable and dependable service would produce more business and thus serve the public better, and thus produce correspondingly more revenue for applicant company. Although applicant relies heavily on its judgment that many of the largest shippers affected by its proposal will have no alternative but to continue to use rail service and therefore expects no loss of business from this proposed curtailment of depot agent service; however, there is specific testimony, repeatedly stated, in this record from shippers and consignees establishing the fact that curtailment or complete discontinuance of agency service will undoubtedly result in diversion of traffic to other railroads and to other means of transportation. Even a relatively small loss of traffic would completely offset the savings the applicant anticipates. It is my considered judgment that upon the granting of this application there will be a sufficient diversion of traffic to other means of transportation to more than offset the anticipated savings. If that should occur I would expect that the loss in net revenue would be used as a basis for further curtailment of services and for further curtailing of maintenance and service on applicant's railroad in South Dakota. Such curtailment would in turn lead to further losses of business and revenue, and initiate a spiral inevitably ending in proposals to abandon at least some of its branch lines in South Dakota. Thus, it seems to me, the applicant's proposal would more probably lead to branch line abandonments rather than to the preservation of branch line service as claimed by applicant, all to the detriment of the public generally.

The applicant relies heavily on what it considers to be a statistical demonstration of wasteful practices through excessive payments for idle time on the part of the agents

at one-man stations. From station records it has extracted statistics of certain selected revenue-producing transactions which it calls "work units." It then calculates from these data the average daily time devoted by the agent at each station to the actual performance of duties and computes astounding payments for time actually devoted to duty. In so doing, in arriving at its computations, the applicant attributes an arbitrary 15 minutes of time to each work unit. I am convinced that this method produces results that have no relationship whatsoever to reality. The reasons for this conclusion could be discussed at great length. Perhaps a few indications will suffice. First and foremost, the statistical results are completely at variance with facts. Numbers of witnesses from various stations who are in a position to observe the activities of the agent daily have testified from their personal observation that the agent spends very much more time in the actual performance of station agency service than applicant's statistics show. Some witnesses characterized the statistical results as "fantastic." Secondly, the statistical method employed makes no allowance for the service rendered to the applicant by the agent being on duty throughout the business day to render service to railroad patrons when, as and if, the patrons seek the service. Another number of witnesses testified that in their own businesses they feel obliged to keep employees in attendance upon the need of the public even though such employees may not be constantly busy. Thirdly, it is in the very nature of an annual average that it completely excludes consideration of daily, weekly and seasonal demands of the business upon an agent's time. When public service demands a full 8 hours or more of attention on one day the rendition of that service is not facilitated by the fact that the agent may have nothing or very little to do on some earlier or later day. Fourth, these statistics are admittedly not

based on actual time studies at any station. If we are or if we were considering the traditional application for the closing of an individual station, it would be feasible to determine to what extent the agent's time is actually occupied. The very nature of the applicant's petition makes this impracticable in the instant case. One witness with quite extensive experience in the ascertainment of station work loads and efforts to devise formulae for computing work loads from station records testified on the basis of his experience that no reliable rule or measuring stick, or call it formula, of this kind could be devised. Tests showed that the results deviated widely in both directions from the results of actual time studies. This evidence was not challenged or refuted.

This unreliability of these work-unit computations in and of itself seriously undermines the applicant's case, since they are relied upon to show not only wasteful wage practices but volume of business, need for agency service, and relative annual fluctuations in business as well.

I am also greatly disturbed by the attitude of the applicant toward their obligations as a public utility. The applicant here asserts, on the one hand, that all phases of transportation have become highly competitive and that it is therefore necessary that railroads be given freedom to arrange their methods of doing business in a manner comparable to other business without "being tied down" so the testimony shows by federal or state laws and regulatory boards and commissions, rulings and restrictions. Yet, it appears from the record that other forms of transportation, such as air, highways, trucks, water, pipelines are regulated too, even the regulation of telephones, light, power, etc. The chairman and chief executive officer of the applicant company testified in substance that inevitable, the railroads must consider that competing forms of transportation will outstrip them in everything except

long hauls of carload commodities. Time after time, in applicant counsel's examination and cross-examination of protestant witnesses, it was indicated, on the one hand, that competing forms of transportation could better supply the services that the witnesses wanted from the railroad, and, on the other hand, that as to certain traffic, particularly carload shipments of grain to terminal markets, there would be no diversion to other forms of transportation because of the so-called in-transit rate privileges offered the shipper by the railroads, which gave the shipper no alternative but to continue to use rail transportation no matter how inconvenient or slow or inadequate the service might be.

In their majority report and decision in this case, Commissioners Doherty and Lindekugel have given approval to close up and remove the 69 depots in the 69 towns and cities located on the Chicago and North Western Railroad Company in South Dakota, and to discontinue all station agency service thereat unless protestants, Order of Railroad Telegraphers, will agree to the so called central agency plan of the applicant here promulgated and advanced. If any of the businessmen in such towns care to do any business the railroad by and through the station agent, these businessmen will have to travel all the way from 2 miles to as much as 35 miles to see and do business with a station agent. That in effect is the situation here. The testimony is plain to me that there will be no roving or traveling station agents provided. If any business is to be transacted with the railroad, it means that the businessman must come to the agent and not vice versa.

The Commission has never had such a case before it. According to applicant and its array of attorneys, this proceeding was commenced and prosecuted under the provisions of SDC 52.0932 as amended. Just think of it, 69 individual station agency cases were to be tried as one

case in one hearing. As I view it, there appears to be no provision under said Section of the Code for this type of procedure or hearing. I believe that under said law it contemplates and requires a separate and distinct hearing for each individual railroad station in South Dakota, such hearing to be held in the town or city in which such station is located or at some nearby town or city for convenience sake of holding a hearing. The Commission must keep in mind that separate findings are necessary as to each station and agent or agency involved, and each must be based and decided upon its own merits. A precedent is here sought to be established, which is unorthodox and not contemplated nor provided by law. This kind of blanket request and presentation does not satisfy the requirements of the statutes, nor does it by any means give the people, who are the public, a fair and adequate opportunity to be represented or heard.

Much has by me already been said about Work-Load. Much was testified to by applicant's witnesses as to the Work-Load of each depot agent in the 69 stations here sought to be eliminated. The amount of time allotted by applicant for the agent in each case seems so small that it certainly creates doubt in itself of its own validity. I certainly cannot bring myself to believe that some of applicant's agents spend as little as 12 minutes per average working day at Ferney, South Dakota, to a maximum of about 2 hours at Onida (Exhibit 5). Not one bit of testimony was given in this whole record to show work done, or time spent, by each station agent to work up, supervise, and complete a transaction. Every one of the witnesses who protested these depot closings testified that the agent is doing a good job for the railroad in his assigned community. A station agent is the railroad's ambassador of good will in his station-agency territory. Without an agent there will be no public relations work done or exist-

ing between the railroad on the one hand and the shipping public on the other hand in the various towns and cities here involved.

This record is full of testimony which shows that when and where agency service is discontinued and withdrawn, people in that community immediately seek other means of transportation, and usually get it, to ship their commodities in and out of their towns and cities. This record is full of testimony that the only money saved by the railroad company here is what it costs them to hire a station agent, plus heat, telephone, etc., at each one of said stations. This combined expense, let us say, averages about \$5,000 a year at each of said 69 stations. The money this applicant will lose after these stations are closed, or any one of them, except possibly a few of the very smaller ones, and the inconveniences brought about and the disturbances caused, will in my judgment amount to much more than keeping a station agent at the station. People nowadays know that other means of transportation is available to them, and this also includes grain elevator operators, and it is a certainty, even though the railroads offer so called in-transit privileges in the shipment of grain, that the applicant railroad will lose much more traffic and money by taking away these station agency services in these 69 towns, or a portion of them, than if they left them alone and operating.

Commissioners Doherty and Lindekugel, in their majority report (Page 5), say that "92% of all revenue of these 69 stations was consumed in paying operating expenses Other Than Station Expenses." That, to me means that even if all of the 69 stations are closed up and the facilities done away with, this 92% of the expense (of the revenue) will still be present and will always be present and recurring annually, depot agent or no depot agent. Mr. Doherty and Mr. Lindekugel say in their report (Page 8) that some

of the other large businesses, Peavey, Sexauer, Tri-State Milling, etc., were not present at the hearing to give testimony. They say "other type of testimony Which Is Conspicuous By Its Absence in this case is that of the large grain companies operating in this state." Such a statement should not even be made a part of this case nor any case of this kind. No such testimony exists in this record. Absence does not give consent to anything. This statement assumes that since these big elevator companies did not give any testimony, they, by their absence from the hearings, acquiesced in the proposal of applicant railroad company.

Reference, in the majority report, was also made to SDC 52.0202. It is but partly quoted in the majority decision above. Upon reading this entire Section of the Code, it would appear that SDC 52.0202 defines the general regulatory powers of this Commission, where the Commission must, upon due investigations, require a common carrier of this state to do something. A railroad is a common carrier as defined in SDC 52.0201. SDC 52.0202 is not applicable here, nor can it be applied in a station agency case where we have a specific law on the subject matter, SDC 52.0932. SDC 52.0932 only applies to discontinuance of station agency service and removal of depots and this law lays down certain requirements to be met before a railroad is entitled to such discontinuance of station agency service. It is a specific law covering one subject only and not a general law, and this section we must follow and not 52.0202. However, in following SDC 52.0932, a separate application and a separate hearing as to each individual station is contemplated. It was never intended that more than one application (69 in the instant case) be heard at one time. Our laws are undisputed, I believe, that where a specific law covers a subject matter in detail, it must be followed and such a specific law takes

precedence over a general law. Therefore, I repeat, SDC 52.0202 is not applicable here.

In their majority report and decision the other two Commissioners make much that the Chicago and North Western Railroad Company sustained a deficit of \$5,529,297 in 1956. However, nothing was said that in 1957 this same applicant only sustained a deficit of \$414,524. According to that rate, it may well be that a net profit may be realized in 1958.

Pages 5 and 6 of the majority Report agreed to by Doherty and Lindekugel shows, in detail, the names of the several stations in South Dakota located on applicant line of railroad; the second column shows total revenue of each station; the third column shows "Expense Other Than Station Expense;" and the fifth column shows "Station Expense." Again I wish to call attention to the fact that the column headed "Expense Other Than State Expense" is an annual recurring expense whether station agency service is given or not. Pages 5, 6, and 7 are supposed to show the total revenue derived at each station assignable to said station. But look at Exhibit 60 and compare. This Exhibit shows a gross income for 1956 amounting to \$8,027,606.00.

Let us look at the Fort Pierre picture again. The testimony by applicant's witnesses shows that the station at Fort Pierre, in 1956, took in and collected \$176,582.00. This is the only railroad station where the figures, as submitted and testified to by applicant and their witnesses, were challenged by businessmen and witnesses from Fort Pierre including applicant's own depot agent. These figures, after the mistake was discovered, were, by agreement of the attorneys, changed so that the total gross income at Fort Pierre for 1956 was \$194,016.00, an admission of a mistake of a mere \$17,500. For 1957 (Exhibit 64) it shows an income at Fort Pierre of \$201,872 for 11 months. For 12 months, on the same basis, it would be \$220,224.00

( $\$201,872$  divided by 11 months times 12 months). Could it be, if fully investigated, that this railroad company made similar mistakes in their figures at the other stations here under consideration? Only one station, in figures, was challenged and that was off about  $\$17,500$ . Is it fair to the shipping public to ask for discontinuance of station agency service at a station that has a total intake of revenue of almost  $\$200,000$  in 1956 and  $\$220,224$  in 1957? Now, Fort Pierre, on account of its close proximity to the Pierre station, may be a station that perhaps could be run and operated by the depot agent from Pierre provided it would not increase the number of employees at Pierre station in order to do both jobs. When the total intake at a station is around  $\$200,000$  annually, as at Fort Pierre, it would not appear to be the fair and economical thing to do for this railroad to ask for discontinuance of agency service. It may well be, after Oahe Dam is completed or nearly completed, receipts at Fort Pierre will greatly diminish, but right now should not be closed.

Again I say this application of the Chicago and North Western Railway Company should not be allowed under present situations. If there is need to close up some of their smaller stations here and there over the state, let the railroad company file such an application and a hearing thereon can and will be held to determine if the railroad company is entitled to the relief as provided for under SDC 52.0932. Other railroads operating in South Dakota have always followed that procedure.

I, therefore, cannot agree with the majority commission opinion herein, and I hereby make and file this dissenting opinion and statement.

Chris A. Merkle,

*Commissioner.*

Public Utilities Commission  
of the State of South  
Dakota.

**PLAINTIFF'S EXHIBIT NO. 2-A.**

**Office of the Secretary  
PUBLIC UTILITIES COMMISSION  
STATE OF SOUTH DAKOTA**

This Certifies, That I have on the 22nd day of August, 1958, compared the hereto attached copy of instrument known as Order Denying Rehearing in the matter of Rearranging and revising station agency service in South Dakota, by the Chicago and North Western Railway Company, in Public Utilities Commission, Docket No. F-2499 with the original now on file with me, as Secretary, and the same is a full, true, correct and identical copy of said original and of every part thereof.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the Public Utilities Commission of the State of South Dakota, at Pierre, the Capital, on this 22nd day of August, 1958.

**E. F. Norman,**  
*Secretary, Public Utilities Commission,  
State of South Dakota.*

(Official Seal)

At a Regular Session of the Public Utilities Commission of the State of South Dakota, held in its offices, in the City of Pierre, the Capital, this 13th day of June, 1958.

Present: Commissioners Doherty and Lindekugel.

(Merkle dissents.)

In the Matter of the Application of  
the Chicago and North Western  
Railway Company for Authority  
to Revise, Adjust and Rearrange  
Its Agency Service in South  
Dakota. } (F-2499)

#### ORDER DENYING REHEARING.

On the 9th day of May, 1958, the Commission issued its Report and Order in Docket F-2499, involving the Centralization of Agency Service at numerous stations on the Chicago and North Western Railway Company's lines in South Dakota, to which Report and Order, reference is hereby made.

On the 21st day of May, 1958, the Order of Railroad Telegraphers filed with the Commission a formal petition for rehearing; on May 26, 1958 the cities of Wessington Springs, Hitchcock, Athol, Houghton, Bonesteel, Mansfield and Northville jointly filed a formal petition for rehearing; and, on June 2, 1958, the cities of Hartford, Humboldt and Montrose, jointly, and the cities of Carthage and Canova, jointly, filed formal petitions for rehearing; and on June 7, 1958, the cities of Hermosa, Quinn, Oral, Buffalo Gap, Oelrichs, New Underwood, jointly, and Astoria, singly, filed formal petitions for rehearing; and on June 9, 1958, the town of Wood, singly, and the Farmers Co-operative Association of Dallas filed petitions for rehearing; and all applicants, except Wood and the said Co-operative

Association requested suspension of the Order issued in Docket F-2499, during the pendency of the petition for rehearing if granted.

Each of the several petitions filed after May 21, 1958, except Wood, and the Farmers Co-operative Association incorporate therein by reference the petition for rehearing filed by the Order of Railroad Telegraphers.

In disposing of these applications, the Commission deems it important to re-emphasize the precise nature of the Order it has entered. What it has done is to authorize and direct the carrier forthwith to place in effect the Central Agency Plan; and, pending further report by the carrier as to the actual operation of this Plan, it has deferred action upon the carrier's request for authority to abandon entirely the stations in question.

This Order is directed only to the carrier; and the carrier has acted to place it in effect. The Commission has thus far had no evidence whatsoever of any adverse effect upon shippers which would warrant withdrawal of the Order or suspension of its operation.

The Applications for Rehearing are founded in large part upon alleged contractual limitations upon the carrier which, if they do in fact exist, might interfere seriously with the economies and efficiencies to be realized by the carrier through the Central Agency Plan. The carrier, against whom this Order is solely directed, has not relied upon any such alleged contractual limitations as a reason why it should be excused from compliance. The effect of such limitations, if any do exist, presumably will be reflected in the report to be rendered by the carrier at the end of the 120-day period, at which time the Commission is to give further consideration to the carrier's request for authority to close the stations involved.

In its Report the Commission expressly stated that whether such contractual limitations as are alleged to exist,

do exist in fact, depends upon the proper interpretation to be given to the carrier's contracts—and we stated that this was beyond the Commission's province and jurisdiction. Reaffirming this view, we note that there were contained in our Findings and Order certain statements which make it appear as if we had interpreted these contracts, and which, in any event, are unnecessary to the exercise of the statutory power upon which our Order was based. Accordingly we deem it desirable to clarify, and we hereby amend our Findings and Order so as to eliminate and modify any statement therein which may be construed as an adjudication of the validity of or an interpretation or application of any labor agreement, or as a directive to violate any contract which may in fact exist or to circumvent the Railway Labor Act in connection with the execution of our Order, by eliminating Findings Nos. 6 and 7, and the words "at one agent's salary" in Finding No. 8, and the words "at one agent's wages" in the first ordering paragraph of our Order.

The Commission having considered the allegations of the several petitions for rehearing and reviewed the record in this proceeding; it is therefore

Ordered, that all Petitions and Applications for rehearing in Docket F-2499 be, and the same are, hereby denied.

By Order of the Commission:

E. F. Norman,

*Secretary.*

(Official Seal)

**PLAINTIFF'S EXHIBIT NO. 3.**

State of Iowa,  
Office of the Iowa  
State Commerce Commission. } ss.

I, Leo F. Wolfinger, Secretary of the Iowa State Commerce Commission, certify that attached hereto is a true and correct copy of Decision and Order, dated August 11, 1958, "In the Matter of an Application of the Chicago & North Western Railway Company for Authority to Revise, Adjust and re-arrange its Agency Service in Iowa, Docket A-5726.

In Testimony Whereof, witness my signature and the seal of the Commission at Des Moines, Iowa, this 21st day of August, 1958.

L. F. Wolfinger,  
*Secretary.*

(Seal)

**BEFORE THE IOWA STATE COMMERCE COMMISSION.**

In the Matter of an Application of  
the Chicago and North Western  
Railway Company for Authority  
to Revise, Adjust and Rearrange  
Its Agency Service in Iowa. } Docket  
No. A-5726.

Hearing held at Des Moines, Iowa, March 18-21, 1958,  
inclusive, and recessed to Denison, Sioux City, Algona,  
Cedar Rapids and Des Moines. Oral arguments held July  
2, 1958.

**DECISION AND ORDER.**

August 11, 1958.

**Appearances:**

For the Applicant—Chicago & North Western Railway  
Company—

Frank W. Davis and Ray H. Johnson, Jr., Attor-  
neys, 1115 Bankers Trust Building, Des Moines,  
Iowa, and

F. O. Steadry, Attorney, 400 W. Madison St.,  
Chicago, Ill.

Appearing on behalf of all protestants generally:

Conrad A. Amend, Commerce Counsel.

Robert R. Rydell, Assistant Commerce Counsel  
and

Richard S. Hudson, Assistant Commerce Counsel,  
State Capitol, Des Moines, Iowa.

Appearing on behalf of the Order of Railroad Tele-  
graphers—Protestants—

Lester P. Schoene, Attorney, 1625 K Street, N. W.,  
Washington, D. C.

C. O. Griffith, Attorney, 3860 Lindell Blvd., St. Louis, Mo.

G. E. Leighty, President, 3860 Lindell Blvd., St. Louis, Mo.

B. N. Kinhead, Vice Pres., P. O. Box 897, Parkersburg, W. Va.

R. C. Williamson, 1703 Daily News Bldg., Chicago, Ill.

Appearing on behalf of the Railway Brotherhoods of Iowa, protestants—

Frank J. Lynott, 308 Teachout Bldg., Des Moines, Iowa.

Appearing on behalf of the Brotherhood of Railway Clerks, protestants—

Claude E. Davis, 2925 Easton Blvd., Des Moines, Iowa.

Appearing on behalf of the Order of Railway Conductors and Brakemen, protestants—

John L. Sheeley, 110 Linn Street, Boone, Iowa.

Appearing on behalf of the Ogden Grain Elevator, Danilson Elevator and other shippers in Ogden, Iowa, protestants—

Stanley R. Simpson, Attorney, Ogden, Iowa.

Appearing on behalf of the Town of Beaver, Iowa, and Farmers Elevator Cooperative, Scranton, Iowa, protestants—

A. V. Doran, Attorney, Boone National Bldg., Boone, Iowa.

Appearing on behalf of Ralston Cooperative Association, Ralston, Iowa, protestants—

Francis L. Cudahy, Attorney, Jefferson, Iowa.

Appearing on behalf of Concrete Materials and Construction Co. and Concrete Materials Company, protestants—

Donald R. Wigton, Box 790, Cedar Rapids, Iowa.

Appearing on behalf of the Town of Ringsted, Iowa, protestant—

Francis Fitzgibbons, Attorney, Estherville, Iowa.

Appearing on behalf of Loveland Elevator Company, Missouri Valley, Iowa, operating at Modale, Missouri Valley, Loveland, and Council Bluffs; and California Grain and Lumber Company, California Junction, Iowa—protestants—

K. C. Acrea, Attorney, Missouri Valley, Iowa.

Appearing on behalf of the Town of Lake View, Iowa—protestant—

Robert G. Logan, Attorney, Lake View, Iowa.

Appearing on behalf of Walter Noack and Ralph Dier-enfield, West Side, Iowa—protestants—

Erwin H. Hansen, Attorney-at-Law, Manning, Iowa.

Appearing on behalf of the Town of Vail, Iowa—protestant—

J. H. O'Connor, Attorney, Vail, Iowa.

Appearing on behalf of Whiting and Linn Grove, Iowa—protestants—

Richard Rhinehart, Attorney, 336 Davidson Bldg., Sioux City, Iowa.

Appearing on behalf of the Kingsley Community Club, Oltman and Phelps Bank, Kingsley Lumber Company, Page Lumber Company and Farmers Elevator Company, all of Kingsley, Iowa—protestants—

Wallace W. Huff, Attorney at Law, 314 Security Bldg., Sioux City, Iowa.

Appearing on behalf of Salix, Iowa—protestant—  
William A. Shuminsky, Attorney, 809 Security  
Bldg., Sioux City, Iowa.

Appearing on behalf of Farm and Town Lumber Com-  
pany, Farmers Cooperative Grain Co. and Steel-  
man Cob Co., all of Dumont, Iowa—protestants—  
Frank N. Enbusk, Attorney at Law, Mason City,  
Iowa.

Appearing on behalf of Cartersville Elevator, Carters-  
ville, Tyden Feed Co., Dougherty and Farmers Co-  
operative Elevator Co., Dougherty—protestants—  
B. C. Sullivan, Attorney at Law, Rockford, Iowa.

Appearing on behalf of Dolliver and Fenton, Iowa—  
protestants—  
F. J. Kennedy, Attorney, Estherville, Iowa.

Appearing on behalf of the Town of Lone Rock, Lone  
Rock Cooperative Elevator, Kossuth County Imple-  
ment Co., Blanchard Lumber Co. and Lone Rock  
Bank—protestants—  
Leo J. Cassel, Attorney at Law, Barry Bldg.,  
Algona, Iowa.

Appearing on behalf of the Town of Bancroft, J. H.  
Welp Hatchery and other enterprises, Thompson  
Yards, Murray Elevator and Mrs. R. S. Under-  
kofler—protestants—  
J. D. Lowe, Attorney at Law, Algona, Iowa.

Appearing on behalf of protestants in Calamus, Grand  
Mound, Chelsea, Mechanicsville, Wheatland, Stan-  
wood, Fairfax and Norway, Iowa—protestants—  
Warren C. Ackley, Attorney, 705 Higley Bldg.,  
Cedar Rapids, Iowa.

Appearing on behalf of Clarence, Iowa—protestant—  
Durwood W. Dircks, Attorney, Davenport Bank  
Bldg., Davenport, Iowa.

Appearing for Farmers Cooperative Company, A. Moorehouse Company, Glidden Farm Equipment Co., Thomas Connor, Quality Egg Marketing Cooperative, all of Glidden, Iowa—protestants—

O. B. Overholt, Attorney at Law, Glidden, Iowa.

Appearing for the Town of Stratford, Iowa—protestant—

Lloyd Karr, 711 Des Moines St., Webster City, Iowa.

The Chicago & North Western Railway Company on January 24, 1958, filed a petition requesting authority as outlined in the following paragraph. Notices were thereafter posted at stations as required by statutes and rules of this Commission. Hearing was held at Des Moines, Iowa, on March 18-21, inclusive, at which time the testimony of the applicant was presented. The hearing was thereafter recessed to Denison, Sioux City, Algona, Cedar Rapids and Des Moines for the purpose of hearing objectors to the petition. At the conclusion of hearing on June 6, 1958, this matter was taken under advisement upon completion of oral argument of appearances of record. Oral arguments were heard on July 2, 1958.

The petitioner requested (1) authorization to withdraw and discontinue agency service and to remove and retire depot facilities at 111 Iowa one-man stations: (2) authorization to inaugurate and establish the central agency plan set forth and described in the petition in lieu of the relief requested in No. 1 above, if within 30 days following the issuance of an Order granting relief, arrangements can be completed which will permit the petitioner to effect the economies contemplated by such program and (3) the ordering of such further and different relief as the Commission deems appropriate.

The applicant on the first day of hearing on March 18, 1958, amended its petition in the following respects:

1. Eliminating the stations of Lisbon, Luverne, Onawa, Missouri Valley and California Junction.
2. By substituting Ceylon, Minnesota, as a central agency instead of Dolliver, Iowa.
3. By making Ankeny a central agency with Sheldahl as an associate station of Ankeny instead of Des Moines.
4. By eliminating Webster City and substituting Eagle Grove as a central agency.
5. By making Danbury an associate station with Mapleton as a central agency instead of Ida Grove.
6. By making Blencoe a central agency with River Sioux as an associate station of Blencoe instead of Mondamin.

A written amendment to its petition was filed by the applicant railroad company on June 24, 1958, showing that the Interstate Commerce Commission had issued a Decision and Order authorizing the abandonment of the segment of line between Belle Plaine and What Cheer, Iowa, effective July 16, 1958, unless the Order was stayed. The Order became effective on the date last above mentioned. The stations at What Cheer, Deep River and Hartwick on this segment of railroad are involved in the subject matter herein and as a result of the above mentioned action are withdrawn from consideration.

The net result of the changes is that there are 105 stations for consideration of which 27 would become central agencies and thus 78 associate stations.

Attached hereto and made a part hereof is Appendix "A" showing stations in program after amendment of petition divided into those proposed for withdrawal of agency service and those proposed as central agency stations.

Attached hereto and made a part hereof is Appendix "B" quoting appropriate statutes considered applicable to this proceeding.

During the first four days of hearing witnesses for the railroad testified concerning the condition of the property in 1956 when it came under new management and the changes and betterments which have since been made and which are contemplated when funds are available; and that one means of obtaining such funds was by the reduction or elimination of non-productive endeavors, with particular emphasis on the reduction of one-man station service systemwise, and particularly in Iowa.

The financial condition in 1956 was described as desperate with \$11 million loss in the first six months and \$5½ millions loss at the end of that year; that track structures, buildings, equipment, rolling stock and motive power showed high deterioration; that personnel attitude was poor; that repair, accounting and many practices were obsolete; that of each dollar, 59¢ was being used for wages and salaries, which was higher than comparable Class I railroads serving similar areas; that it is a debit railroad as respecting boxcars, resulting in large rentals for cars for its use; that rate increases in recent years have not resulted in any appreciable increase in revenues due to loss, erosion and diversion of traffic; and that nearly all the freight earnings were being used to subsidize passenger operations, rather than for maintenance, improvement and new equipment. The management had become convinced that the railroad was pricing itself out of the market rate-wise.

As a result of studies and application to the regulating agencies losing passenger operations have been materially reduced; pick-up and delivery of l.c.l. has been discontinued; the 1200 units of steam and diesel motive power

have been reduced to 700 and the road completely dieselized, including all branch lines, without purchase of new power and with resultant elimination of coal and water facilities, backshops, etc. A central car repair shop has been built at Clinton to consolidate 14 repair shops previously located at different places. Yards have been revised and consolidated and station expenses reduced at other than one-man stations where the company had jurisdiction to do so. Reduced schedule time for trains has been inaugurated. A highway crossing protection program will result in two million dollars savings annually. In some special situations rates have been reduced to retain and attract shipments to the railroad. The track structure has been improved and maintenance mechanized. The accounting department has been modernized and the departmental organization of the railroad eliminated. In each of the last two years one million dollars has been expended for betterments. Land has been purchased, and efforts are being made to attract new industries to increase carloadings.

It was stressed that there has been a revolution in the past few years in transportation which has been brought about by the advent of trucks, automobiles, good roads, airlines, barge and pipelines, all of which have had an impact and have reduced the volume of shipments and number of passengers, particularly on branch lines which compose 43.1% (602 miles) of the Iowa total mileage of 1396 miles. Efforts have been made and are being continued toward making savings on branch lines, among them elimination of non-productive agency service, which savings can be used to improve track structure and thus increase the train speeds and to build new cars and repair older ones so that these feeder lines can be retained.

Much statistical information, other than that directly

relating to stations, was submitted. The following show results in Iowa for a ten year period 1947-1956:

Tons of l.c.l. freight carried.....	61 % decrease
Passenger train miles.....	70 % decrease
Freight train miles.....	39 % decrease
Passengers carried.....	70 % decrease
Carloads of agricultural products...	30 % decrease
Carloads of animals and products...	41 % decrease
Freight operating revenue.....	3.4% increase
Passenger operating revenue.....	74.8% decrease
Freight rate increases.....	68 % increase
Total revenue carload traffic.....	13.7% decrease
Originating and/or terminating carloads .....	25.1% decrease
Revenue T.M. per mile (Index 1947-100) .....	90

Unit costs for cars of all types have risen approximately 50% since 1947, materials and supplies 70% and wages 82%. 99.50% of freight operating income was absorbed in 1956 by passenger losses. In 1957 the l.c.l. shipments were down 89% from 1947 with the prophecy that within a few years there will be none of this traffic. In Iowa, 34.5% of cars originate and terminate and 65.5% are bridge traffic, the latter requiring little, if any, station service.

The number of employees in one-man station service in Iowa was reduced 27% in the period 1947-1956. In the latter year there were 151 employees located at 143 one-man and 4 two-man stations. Most of the reduction occurred at multiple man stations. The purpose of the program was to reduce such services, not only to accomplish a reduction of expense on branch lines, but as well on main lines at points where such service was considered excessive in relation to public need.

Under the proposed plan 105 stations would be discontinued with 27 of those stations reopened as central

agencies, thus leaving 78 to receive service as associate stations. The associate stations will be serviced by the central agencies. They will not be removed from the tariffs and will not be prepaid. The agent at the central agency will travel to the associate station or stations as regularly and as frequently as business requires. He will accommodate the patron in the matter of signing bills of lading, loss and damage inspection claims or any personal attention needed by a shipper at an associate station. The ordering of cars, obtaining information, quotation of rates and other services can largely be handled by telephone with charges absorbed by the railroad company. The average distance between stations is 8.4 miles. The central agent will be paid auto mileage for his travel between stations. He will advise consignees of shipment arrival. He will collect freight charges. Sign drafts with bill of lading attached can be conveniently handled. The usual and regular agency service will be offered at the central agencies. The central agencies are chosen on a number of factors, among them geographical location, number of persons served, physical condition of property, railroad operational requirements, highway conditions, competitive transportation, etc. Revenues were not taken into consideration in the determination. The l.c.l. shipments to and from associate stations will be handled at the central agency; also express and Western Union, if the companies offering those services so elect. The estimated annual net savings is \$391,000. The objective of the whole plan is to recognize changed transportation and economic conditions and enlarge the area of service that an agent can give from a central agency.

It was testified that commodities requiring agency service have decreased 89% since 1947, particularly l.c.l.; that passenger business at the stations involved has decreased almost to the vanishing point. There is passenger service

at only five of the stations. A comparison was made of train service in 1910 with that of the present time with a result that it showed that the large amount of freight and passenger service, persons and goods handled has been reduced at the branch line stations and at most of the main line ones to freight daily or tri-weekly or bi-weekly and that in many events the train passes the station while the agent is not on duty. Under the changed train operations the agent is no longer an essential in the direction of train movements. Most of the carload traffic now consists of grain outbound, coal, lumber and other merchandise inbound. 90% of the cattle outbound move by truck. There is a limited amount of western cattle inbound for feeding. The average carloads per station per day for the stations involved in the program is 1.4. The average agency hours per revenue car is 6 with average wages paid per revenue car \$12. and average wages paid per hour actually worked \$13. The total hours on duty actually worked is 17%. The present average station work load per work day is 1' 14", which is a decrease of 28% from 1951 and the estimated average work load under proposed program would be 3' 15". The average l.c.l. per day was one shipment in 1957; 1.8 in 1956; and 2.2 in 1955.

The work load of a station was arrived at by assigning 15" to each transaction and duty performed by the agent during a year, including the handling of express and Western Union. The amount of work units for the year was divided by 255 (the number of work days) thus producing the number of work units per day. The latter sum multiplied by 15" produced the average station work load per work day in hours and minutes. This information was produced for each station in the program and compared with the work load at the same station in 1951. Even though the agent is paid extra compensation by express and Western Union for handling those services, yet the

work units for that service are a part of the total as calculated and shown by the railroad company.

After hearing the applicant testimony in Des Moines, the hearing was recessed to reconvene at Denison, Sioux City, Algona, Cedar Rapids and Des Moines for the purpose of hearing protestants. There appeared at these locations 160 witnesses from 66 of the 108 communities, who offered testimony in opposition to the proposal. In all 2591 pages of testimony was produced and 105 exhibits were introduced. There were 39 objectors from 14 communities where central agency service is proposed. Of the 161 objectors there were 101 or 63% who testified concerning elevator, grain and lumber operations or lines closely associated therewith. The remaining protestants represented a large variety of business and industry interests.

The testimony was voluminous and much of it was of necessity repetitions. It was largely directed to the need for agency service directly in the communities. Many reasons were advanced, the most common being the need of the agent for ordering, tracing, inspecting, spotting, sealing, reconsigning, furnishing rate and other information, verifying and making claims for loss and damage, determining demurrage, inspection of loading and lading, furnishing information relative to arrival of train, handling l.c.l., collecting charges, signing bills of lading, sending and receiving telegrams and express shipments. In many cases it was claimed that the local agent's services were available after his regularly assigned hours and that this was beneficial to them. In practically all instances there was objection to the necessity of traveling to the central agency to obtain l.c.l. and express shipments and of contacting an agent at another location, they alleging that they would be unable to locate him when they desired service; also that in many instances the telephone service was

either poor or it was necessary to wait an undue length of time to complete a call.

Many of the complaints of carload shippers, particularly grain and elevator, concerned the obtaining and forwarding of a signed bill of lading on the day a car is loaded and ready for movement. Many of them load until late in the day and though this could not be accomplished unless the agent was present and the loading was during his scheduled working hours. This was particularly true of the loading of Commodity Credit corn, which composes an estimated 75% or more of all such movements. In the course of the hearing a letter addressed to the Chairman of this Commission by the Commodity Credit Corporation was read into the record, it stating in brief that a delay of one day in forwarding bill of lading would not work an undue hardship and that they had been advised by a proper representative of the Chicago & North Western Railway Company that in some instances cars may be released one day and the agent sign the bill of lading the following day, with it bearing date of actual release.

Much civic pride was evidenced with emphasis on the desirability, convenience and necessity of having local, agency service to attract new industries to the communities as well as for the direct benefit and accommodation of the shippers and users of railroad service.

#### Discussion.

We feel that we do not need to here enter into an extended discussion of the authority conferred upon this tribunal by statutes as shown in attached Appendix "B". The three sections 474.15, 474.16 and 474.17 were enacted to specifically give this Commission jurisdiction in matters relating to railroad stations and agencies and they specify the general manner of procedure on the part of the railroad company as well as of this Commission. The company

followed the outlined procedure contained in Section 474.15. Objections were filed by a large number of directly affected persons as permitted by Section 474.16. As heretofore stated, a time and place for hearing was named, and all protestants and communities were duly notified more than the statutory time in advance of the date of hearing so that they could appear and be heard, if they so desired. Section 474.17 gives to this body the discretion of prohibiting the abandonment or discontinuance of a station or agency, or the removal of the depot, or to *make such other order as is warranted by the evidence produced at such hearing*. By this language it was certainly not the intent of the Legislature to limit or bind this body to a hard and fast procedure, but to permit it to use discretion and judgment in its findings, only limited by the evidence. Three alternatives were contained in the petition of the applicant. We can make a finding based upon any one of them or on any combination thereof. We find that the authority conferred by statute is completely sufficient for us to make a finding in this matter.

We will have occasion in our conclusions and order to diverge from the prayer of the company to an extent necessary to properly adjudicate the matter. We feel free to do so within the confines of the evidence.

It was made clear in our Docket A-5644, Minneapolis & St. Louis Railway Company, and other companion cases dealing with station services decided in September, 1957, that any order must be based on "the public interest", or "public convenience and necessity"; that is, the public interest of the state or the public interest of the people of the state.

The public welfare of a considerable number of people of Iowa is affected by the proceeding. It is plain to this Commission in reviewing the powers granted by the Legislature of this State that its authority covers broadly a multitude

of transportation problems. A large portion of the evidence in the matter now before us is concerned with individual inconvenience more than actual public convenience and necessity. Throughout the hearing endeavor was made to confine the evidence to that which showed the need and the convenience and necessity for the agency services under consideration. Anyone appearing in protest should be prepared to prove that a genuine public need exists and that it cannot be met by the proposed plan. Public convenience is the criterion. The convenience ultimately to be served is that of the economic area to which a carrier is committed. A small amount of public inconvenience cannot justify the imposition of unreasonable costs which adversely affect the rate paying public, as well as the carrier itself.

The maintenance of existing services by a carrier must be balanced against the loss of public convenience which will result from a proposal. The inconvenience, if any, on a few individuals, and not on the public, must be compared with the burden imposed on the carrier in handling the business. In common with all other public enterprises operating under a profit system the applicant is compelled, by economic necessity, to curtail inefficient operation. In addition thereto, as a railroad carrier operating in interstate commerce, it is obligated to effect all possible economies, even though it remains subject to state authority with respect to a matter such as the one here under consideration.

No essential service will be discontinued at the associate stations. The only inconvenience will be that the usual duties normally performed by a local agent will be taken care of through the central agency, either by telephone or personally by the agent travelling to the associate station. It is simply a broadening of the service area of one agent to include one or two other nearby stations. The modernizing of transportation and communications has made this

readily possible in this field as it has in most all other ones. Public convenience and necessity have not been materially affected in other industries and neither should it be, nor is it, in our opinion, in this particular area of service.

This Commission has stated its position in the above referenced Docket as well as in other preceding opinions concerning its lack of authority over contractual relations of employer and employee and we here reiterate that position.

We have also heretofore stated that the need, or lack of it, for agency service cannot be established on the basis of revenues alone. The applicant herein did not base its case on revenues produced or not produced at a station but on the extent to which the public uses the services of the agents and the actual time worked in order to handle the business. The gross tariff charges are not a reliable indicator of public need of agency service. They do not accurately reflect the activity at a station. Such revenues are determined largely by the length of line haul and the value of the lading, neither of which are indicative of the amount of agency work performed. The exhibits in evidence show a variation in carload charges from \$98 to \$455 with an average of \$271. The agency work is the same for the one as for the other. The more accurate barometer of public need for the service lies in the number of transactions handled by an agent. We believe this is the preferable manner of determining need and that it offers a fair and reasonable picture of the actual amount of work required of an agent. The summation of the transactions for a year leads to an average per day, or when transcribed into time, to an average of hours and minutes used per day. It is realized that there are days when many loadings will be made and consequently the time used will be increased. There will also be days when little time is used. Where the average is already seemingly high, we are taking into

consideration, in some exceptions hereinafter made, that the work load on some days will exceed the average.

It was stressed by the applicant throughout the hearing that flexibility is the keystone of the proposed plan. This is as it should be. In order to be completely successful over an extended period of time, it must be adaptable and able to conform to changed or changing conditions. It is probable that upon adoption of the proposed plan there will be need in actual practice for some adjustments. In the future it may be that, for instance, an associate station will so increase its shipments and agency needs that it will be desirable to make it the central agency or even an independently operated agency. In such an event the plan must be flexible enough to permit the change. The authorizing of the central agency plan as hereinafter set out is with the understanding that in the event complaints are received by us regarding inadequate or unsatisfactory service at stations we will exercise jurisdiction in the matter of adjustment or correction. It will in all events be expected that the offered service as outlined in petition will be furnished.

Another phase of the program appears worthy of comment. Abandonment of a station involves the withdrawal of the agent thereat; striking the station from the carrier's tariffs, removal of the depot building, and making no provision for the receipt or delivery of shipments at that point. The program as proposed does not take the character of complete abandonment or discontinuance of agency service. Those stations named as associate ones will not be prepaid nor will the tariffs so provide as relating to carload service. Carloads, which produce practically all the revenues, will move into the station in the same manner as previously, either prepaid or with charges collect. Among objections was the possibility of inbound cars not being properly spotted at associate stations. There appears no reason

why this cannot be accomplished to the satisfaction of the shipper, if he will instruct the agent at the central agency of his desires. There was also the matter of obtaining empty cars for loading. The opinion was frequently expressed that without full time agency service at a station there might be discrimination. There is no reason why the agent at the central agency should show preference; as a matter of fact all cars are ordered from one central location and are allocated during car shortages on a formula consisting of several factors. Another principal objection of carload shippers was difficulty in obtaining signature on bills of lading on outbound cars and in many instances it was argued that loading was completed after agency hours, particularly of Commodity Credit corn, which normally constitutes the major portion of shipments. Under the proposed plan the agent from the central agency station will travel to the associate station during regularly assigned hours to sign bill of lading. The Commodity Credit Corporation has said that the commodity can move on the day loaded with signature obtained the following day. The average number of carloads per day at stations involved in program was 1.2 in 1955; 1.3 in both 1956 and 1957. L.c.l. shipments will be delivered to or shipped from the central agency. The record shows an average of one l.c.l. shipment per day per station in 1957. Telegram and express will probably be handled through the central agency, that depending upon the discretion of the companies operating those services. In the past it has been their common practice to use the agency service at an accounting station where we have ordered the discontinuance of an agency and designated an adjacent agency as the accounting and servicing one. We are sure that these latter services will continue to be rendered through the central agency. The estimated average time to perform agency duties at the central agency stations is 3 hours 15 minutes. Under all

these circumstances, little, if any, inconvenience to shippers should prevail at associate stations.

It is the public obligation of this and similar carriers to provide efficient, economical and adequate rail transportation. Agency service is a part of that obligation, insofar as determined needed. There was little, if any, criticism at hearing of the service presently provided. Insofar as agency service is involved it is substantially the same as it was many years ago when a great volume of freight and passenger traffic moved by rail. There is much competition today in both services and this has reduced the needs of such services. They should be fitted to the traffic needs and it is our belief that the proposed reduction and rearrangement of agency service herein proposed accomplishes that end. Stations were originally located to accommodate a slow means of highway transportation, but modern communication and transportation have obviated the need for agencies within only a few miles of each other. In cities of larger size many shippers are required to travel a greater distance than the average of 8.4 miles here involved to obtain such service.

Testimony was offered on the last day of hearing by a railroad witness to the effect that the central agency plan recently inaugurated in South Dakota by the company is operating satisfactorily and without complaint from shippers.

### Findings.

We have given serious and thoughtful consideration to all phases of this problem knowing full well that it represents a change of magnitude and that it will have effect on many shippers and users of railroad service. We have also given consideration to the deteriorated financial condition of the railroad. This condition must be recognized. The problem of granting some relief has been before the

National Congress. Savings must be made by reducing or eliminating service no longer needed. The case before us is a proposal to reduce agency service to the level of actual need. It is not one of complete discontinuance. It is the intent, according to evidence, to use the resultant savings for betterments and improvements such as the upgrading of branch lines, purchase of new cars, repair of cars so that they can be furnished to the shipper in better condition for loading and to otherwise better equip the railroad plant so as to insure efficiency, economy and adequate rail transportation.

We have in our consideration given definite attention, not only to the entire broad scope of the program, but have considered the information, testimony, exhibits and facts concerning the needs of each individual station in the entire program. We fully appreciate that each station has conditions and problems and needs which are not similar in all instances to those of other stations. As a consequence certain changes are designated to be made upon the initiation of the program by the railroad. As hereinbefore stated, there may develop other changes found desirable under actual experience and for this purpose, among others, we are retaining jurisdiction.

It is our opinion for all the reasons herein stated, as well as by facts adduced in testimony and exhibits that No. 1 of the prayer in the application of the railroad company should be denied and that Nos. 2 and 3 in said prayer should be granted subject to the conditions, provisions and exceptions set forth in the ordering portion hereof.

#### Order.

It Is Therefore Ordered that the application of the Chicago and North Western Railway Company be and it is hereby denied as respecting No. One (1) of its prayer and authorized as respecting Nos. Two (2) and

Three (3) of its prayer to inaugurate and establish the central agency plan set forth and described in said application, as more specifically detailed in the following paragraphs:

(1) Denying the applicant the right to discontinue agency service at all of the stations listed in Appendix "A" attached hereto and made a part hereof and as incorporated at No. One (1) of its prayer.

(2) Granting authority to the applicant (Nos. Two (2) and Three (3) of its prayer) to forthwith inaugurate and establish a central agency plan wherein one agent will perform the agency service at two or more of the subject stations and that less carload traffic will be handled at a central agency station, within 90 days of the date of this Order as described in petition as amended and as shown in Appendix "C" attached hereto, with central agencies and associate stations as designated thereon, subject to below listed exceptions which have been deleted from said Appendix "C".

(3) Further Ordering that the railroad company at the end of the 90 day period provided in the preceding paragraph will render a complete and duly verified report to this Commission showing the status of changes authorized herein for our approval, rejection or for the making of such changes therein as at that time may be deemed necessary and proper.

(4) Further Ordering that when the report in the next preceding paragraph is submitted this Commission will determine whether or not the station buildings (depots) shall be retired or removed and the date therefor.

(5) Further Ordering that changes can be made by the applicant in the character of service provided at a station, subject to the approval of this Commis-

sion, where need is established for so doing, or that this Commission upon complaint filed by a directly affected party may order a change after due consideration and investigation.

(6) Further Ordering that the Exceptions below listed are a part hereof and that the changes designated shall be placed in effect concurrently with the remainder of the plan.

(7) Further Ordering that jurisdiction of the entire subject matter is retained by this Commission.

**Exceptions:**

(A) That the proposed combination of Glidden as a central agency and Ralston as an associate station be removed from the program with each station to continue as a separately operated independent agency.

(B) That the proposed combination of Schaller as a central agency and Early as an associate station be removed from the program with each station to continue as a separately operated independent agency.

(C) That the proposed combination of Burt as a central agency and Bancroft as an associate station be removed from the program with each station to continue as a separately operated independent agency.

(D) That the proposed combination of Fenton as a central agency with Lone Rock and Ringsted as associate stations be changed to eliminate Ringsted as an associate station and continue it as a separately operated independent agency.

(E) That the proposed combination of Parkersburg as a central agency with Stout and Dike as associate stations be changed to eliminate Dike as an associate station with it continuing as a separately operated independent agency.

(F) That the proposed combination of Sloan as a central agency with Whiting and Salix as associate stations be changed to eliminate Whiting as an associate station with it continuing as a separately operated independent agency.

(G) That the proposed combination of Dunlap as a central agency with Woodbine and Logan as associate stations be changed to eliminate Logan as an associate station with it continuing as a separately operated independent agency.

(H) That the proposed combination of Harcourt as a central agency with Gowrie and Farnhamville as associate stations be changed to make Gowrie the central agency station with Harcourt and Farnhamville as associate stations.

(I) That the proposed combination of Rolfe as a central agency with Havelock and Bradgate as associate stations be changed to eliminate Havelock as an associate station with it continuing as a separately operated independent agency.

Iowa State Commerce Commission,  
R. H. Thompson,

(seal)

John A. Tallman,

*Chairman,*

*Commissioner,*

John M. Ropes,

*Commissioner.*

Attest:

L. F. Wolfinger,  
*Secretary.*

Dated at Des Moines, Iowa, August 11, 1958.

## IOWA STATE COMMERCE COMMISSION.

## Stations In Program Under Petition As Amended.

Docket No. A-5726.

## Appendix "A".

One-Man Stations (105) where Petitioner Seeks Authority to Withdraw the Agents and To Remove the Depot:

Ankeny	Dougherty	Ledyard
Arcadia	Dumont	Linn Grove
Aredale	Dunlap	Logan
Arthur	Early	Lone Rock
Ashton	Ellsworth	Low Moor
Auburn	Fairfax	Manning
Bancroft	Farnhamville.	Mapleton
Battle Creek	Fenton	Maurice
Beaman	Galva	Mechanicsville
Beaver	Garwin	Modale
Blairstown	Gifford	Mondamin
Blencoe	Gladbrook	Montour
Bradgate	Glidden	Moville
Breda	Goldfield	Norway
Buckingham	Gowrie	Odebolt
Calamus	Grand Mound	Ogden
Castana	Granville	Parkersburg
Chelsea	Harlan	Peterson
Clarence	Havelock	Pierson
Clutier	Hospers	Radcliffe
Colo	Hubbard	Ralston
Conrad	Ireton	Randall
Craig	Irvington	Renwick
Cushing	Irwin	Ringsted
Danbury	Joice	River Sioux
Dayton	Kingsley	Rutland
De Witt	Lake Mills	Salix
Dike	Lake View	Scarville
Dolliver	Lawn Hill	Scranton

Sheldahl  
Sioux Rapids  
Sloan  
Stanhope  
Stanwood  
Stout

Stratford  
Sutherland  
Thor  
Toledo  
Traer  
Vail

West Side  
Wheatland  
Whiting  
Whitten  
Woodbine  
Woolstock

Stations (27) at which central agency service is proposed as an alternate to closing are as follows:

Ankeny  
Arcadia  
Aredale  
Blairstown  
Blencoe  
Calamus  
Conrad  
De Witt  
Dunlap

Fenton  
Gifford  
Gladbrook  
Glidden  
Harlan  
Kingsley  
Lake Mills  
Mapleton  
Mondamin

Odebolt  
Ogden  
Parkersburg  
Radcliffe  
Renwick  
Sioux Rapids  
Sloan  
Stratford  
Traer

**IOWA STATE COMMERCE COMMISSION.****Appropriate Sections Applicable to This Proceeding  
Code 1958****Docket No. A-5726****Appendix "B"**

**474.10. General Jurisdiction.** "The Commission shall have general supervision of all railroads in the State,  
• • •"

**474.14. Changes in Operation and Improvements.** "When in the judgment of the Commission (Iowa State Commerce Commission), • • • any railway corporation fails in any respect to comply with the terms of its charter or articles of incorporation, or the laws of the State; or when in its judgment • • • or change in the mode of operating its road or conducting its business, is reasonable and expedient in order to promote the • • •, convenience, and accommodation of the public, the Commission may make an Order prescribing such improvements or changes as it finds to be proper • • •."

**474.15. Abandoning Station.** "It shall be unlawful for any railroad company owning or operating, or which may hereafter own or operate, any railroad in whole or in part in this state, to abandon any station in any city, town or village on its line of railroad, within this state, or to remove the depot therefrom, or to withdraw agency service therefrom, unless it shall first have filed notice of its intention with the Iowa State Commerce Commission and otherwise complied with the provisions of this section and sections 474.16 and 474.17. Upon the filing of such notice the Commission shall designate the place or places within such town or village where notice shall be posted and the

railroad company shall thereupon, at its own expense, cause to be posted at the place or places so designated, fifteen days notice of intention to abandon or discontinue such station or agency, or remove such depot, and shall file proof of such posting with the commission. The notice shall be in such form as prescribed by the commission."

474.16. **Objections—Hearing.** "Any person or persons directly affected by the proposed abandonment or discontinuance of any station or agency, or removal of any depot, may file written objections thereto with the Iowa State Commerce Commission, stating the grounds for such objections, within fifteen days from the time of the posting of the notice as provided in Section 474.15. Upon the filing of such objections the Commission shall fix the time and place for hearing thereon, which hearing shall be held within sixty days from the filing of such objections. Written notice of the time and place of such hearing shall be mailed by the Commission to the railroad company and the person or persons filing objections at least ten days prior to the date fixed for such hearing."

474.17. **Order of Commission.** "Upon said hearing the Iowa State Commerce Commission may prohibit the abandonment or discontinuance of such station or agency, or the removal of the depot, or may make such other order as is warranted by the evidence produced at such hearing. But if no objections are filed as hereinbefore provided, the Commission shall make an order permitting the railroad company to proceed with such abandonment or discontinuance, or removal of the depot."

## IOWA STATE COMMERCE COMMISSION.

## Stations in Program as Per Decision and Order

Docket No. A-5726

## Appendix "C"

## Associate Stations

Arthur  
 Ashton  
 Auburn  
 Battle Creek  
 Beaman  
 Beaver  
 Bradgate  
 Breda  
 Buckingham  
 Castana  
 Chelsea  
 Clarence  
 Clutier  
 Colo  
 Craig  
 Cushing  
 Danbury  
 Dayton  
 Dolliver  
 Dougherty  
 Dumont  
 Ellsworth  
 Fairfax  
 Farnhamville  
 Galva  
 Garwin  
 Goldfield  
 Grand Mound  
 Granville  
 Harcourt  
 Hospers  
 Hubbard  
 Ireton

Irvington  
 Irwin  
 Joice  
 Lake View  
 Lawn Hill  
 Ledyard  
 Linn Grove  
 Lone Rock  
 Low Moor  
 Manning  
 Maurice  
 Mechanicsville  
 Modale  
 Montour  
 Merville  
 Norway  
 Peterson  
 Pierson  
 Randall  
 River Sioux  
 Rutland  
 Salix  
 Scarville  
 Scranton  
 Sheldahl  
 Stanhope  
 Stanwood  
 Stout  
 Sutherland  
 Thor  
 Toledo  
 Vail  
 West Side

## Central Agency Stations

Wheatland  
 Whitten  
 Woodbine  
 Woolstock  
 Ankeny  
 Arcadia  
 Aredale  
 Blairstown  
 Blencoe  
 Calamus  
 Conrad  
 De Witt  
 Dunlap  
 Fenton  
 Gifford  
 Gladbrook  
 Gowrie  
 Harlan  
 Kingsley  
 Lake Mills  
 Mapleton  
 Mondamin  
 Odebolt  
 Ogden  
 Parkersburg  
 Radcliffe  
 Renwick  
 Sioux Rapids  
 Sloan  
 Stratford  
 Traer

The central agency plan approved in Decision and Order results in the following combination of stations:

**Stations in Each Area Involved in the Central Agency Program and Area Headquarters Station**

- Clinton, Low Moor—Clinton
- De Witt, Grand Mound—De Witt
- Calamus, Wheatland—Calamus
- Lowden, Clarence—Lowden
- Tipton, Stanwood—Tipton
- Mt. Vernon, Mechanicsville—Mt. Vernon
- Blairstown, Norway, Fairfax—Blairstown
- Tama, Toledo, Montour—Tama
- Traer, Clutier, Buckingham—Traer
- Parkersburg, Stout—Parkersburg
- Aredale, Dougherty, Dumont—Aredale
- Hanlontown, Joice—Hanlontown
- Lake Mills, Scarville—Lake Mills
- Belle Plaine, Chelsea—Belle Plaine
- State Center, Colo—State Center
- Story City, Randall—Story City
- Ankeny, Sheldahl—Ankeny
- Conrad, Whitten, Beaman—Conrad
- Gladbrook, Garwin—Gladbrook
- Gifford, Lawn Hill—Gifford
- Radcliffe, Ellsworth, Hubbard—Radcliffe
- Gowrie, Harcourt, Farnhamville—Gowrie
- Lake City, Auburn—Lake City
- Stratford, Dayton, Stanhope—Stratford
- Carroll, Breda—Carroll
- Eagle Grove, Woolstock, Thor—Eagle Grove
- Dakota City, Rutland—Dakota City
- Renwick, Goldfield—Renwick
- Algona, Irvington—Algona
- Elmore, Minn., Ledyard, Iowa—Elmore, Minn.
- Fenton, Lone Rock—Fenton
- Ceylon, Minn., Dolliver, Iowa—Ceylon, Minn.
- Rolfe, Bradgate—Rolfe
- Sioux Rapids, Linn Grove, Peterson—Sioux Rapids
- Orange City, Maurice—Orange City
- Paullina, Granville, Sutherland—Paullina

- Hawarden, Ireton, Craig—Hawarden  
Sloan, Salix—Sloan  
Ogden, Beaver—Ogden
- Jefferson, Scranton—Jefferson  
Arcadia, West Side, Vail—Arcadia  
Dunlap, Woodbine—Dunlap  
Harlan, Irwin, Manning—Harlan  
Odebolt, Arthur—Odebolt
- Ida Grove, Battle Creek—Ida Grove  
Mapleton, Castana, Danbury—Mapleton
- Sac City, Lake View—Sac City
- Holstein, Galva, Cushing—Holstein  
Kingsley, Merville, Pierson—Kingsley  
Mondamin, Modale—Mondamin  
Blencoe, River Sioux—Blencoe
- Sibley, Ashton—Sibley
- Sheldon, Hospers—Sheldon

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• Stations not in program.

**PLAINTIFF'S EXHIBIT NO. 11.**

**NATIONAL RAILROAD ADJUSTMENT BOARD.**

**Third Division.**

Chicago and North Western  
Railway Company,  
vs.  
Order of Railroad Telegraphers. }

**CARRIER'S EX PARTE SUBMISSION.**

**Statement of Claim:**

That the notices served by the Order of Railroad Telegraphers on the carrier, dated December 19, 1957 and December 23, 1957 are in contravention of Article VI of the Agreement of November 1, 1956.

**Carrier's Statement of Facts:**

Effective November 1, 1956, this carrier and a number of other carriers, entered into an agreement through their authorized representatives, with The Order of Railroad Telegraphers and certain other railroad labor organizations, a copy of which is attached hereto as Exhibit "A". Article VI of that agreement provides as follows:

**Article VI--Duration of Agreement:**

The purpose of this agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraphs (d) and (e) of this Article, no carrier or organization, party to this Agreement, will serve any notice or progress any pending notice to—

(a) Increase or decrease rates of pay established by Articles I, II, III and IV of this Agreement.

(b) Increase or decrease the rate of compensation provided in existing agreements or under-

standings, or eliminate or establish agreements providing the rate of compensation, covering overtime payments, arbitrary payments, Sunday or holiday payments, time paid for but not worked, or increase or decrease the number of paid holiday or paid vacation days.

(c) Increase or decrease the amount of payments required to be made by the Agreement of December 21, 1955, and Article V of this Agreement for hospital, medical and surgical benefits for the employees and their dependents.

(d) This Article VI does not prevent adjustments under normal processes on the individual carriers in the rates of pay of individual positions; correction of inequities as between rates for different individual positions on a particular railroad; or negotiation of rates for new positions or positions where the duties or responsibilities have been or are changed. This Article VI will not debar management and committees on individual railroads from agreeing upon any subject of mutual interest.

(e) This Article VI does not prevent the progressing of pending notices, and the serving of notices and the negotiations of agreements dealing with stabilization of employment, separation allowances or other matters not prohibited by the foregoing provisions of this Article VI.

On December 19, 1957 and December 23, 1957 The Order of Railroad Telegraphers served notices on the carrier, copies of which are attached hereto as Exhibits "B" and "B-1". Conferences were held with respect to such notices between the chief operating officer of the carrier designated to handle such matters and the representatives of The Order of Railroad Telegraphers on January 17, 1958, at which time the carrier advised the organization that their purported notice did not cover a matter which was a proper subject for a Section 6 notice under the Railway Labor Act. The representatives of The Order of Rail-

road Telegraphers, however, have asserted the contrary. The parties have been unable to adjust the dispute as to whether or not the notices in question cover matters on which the carrier is required to bargain with the organization under the Railway Labor Act, nor whether bargaining at this time is barred by the provisions of Article VI of the November 1, 1956, Agreement. Consequently, this submission is made to the Third Division, National Railroad Adjustment Board for the purpose of securing an award sustaining the carrier's position.

Position of Carrier: As stated, it is the position of the carrier that the notices served by The Order of Railroad Telegraphers on December 19, 1957 and December 23, 1957 are in contravention of Article VI of the November 1, 1956 Agreement. In the succeeding discussion the application of that Article to the notice served by The Order of Railroad Telegraphers will be considered in detail. First, however, certain general characteristics of the moratorium contained in Article VI should be considered.

Article VI of the November 1, 1956, agreement provides that no carrier or organization, party to the agreement, will serve any notice or progress any pending notice designed to accomplish the results described in paragraphs (a), (b) and (c). Paragraphs (d) and (e), however, provide that certain specified matters may be made the subject of notice, negotiation and agreement during the life of the agreement. Apparently, it is the organization's position that the proposals which it served on December 19, 1957 and December 23, 1957 are proper under the provisions of paragraph (e) of the moratorium. As the succeeding discussion will show, however, the proposal in question is inconsistent with the prohibitions contained in paragraph (b) since it would inevitably result in payments for time not worked. If proposals of this kind are

not prohibited by the moratorium it would appear that the specific prohibitions of paragraph (b) will be largely defeated. It would seem indisputable, therefore, that Article VI should be construed in such a manner as to give effect to all of its provisions, and, in accordance with generally accepted rules of construction, that result is the proper one.

To reach this result, the starting point must be the assumption that the parties meant what they said when they agreed in paragraph (b) that they would not serve or progress notices which would change existing rates, or establish rates for time paid for but not worked. The same assumption must be made, of course, with respect to paragraph (e), which permits the progression of pending notices, the serving of notices and the negotiation of agreements dealing with stabilization of employment, and other matters. It must also be assumed, however, that the provisions of paragraph (e) were not intended to emasculate the other portions of the moratorium.

Once these assumptions are made, it is possible to define the areas of prohibited activity under the first three paragraphs of Article VI and the areas of permissible activity under the last two paragraphs of that article, in such a manner as to give appropriate effect to all of the provisions of Article VI, and the general purpose of the agreement.

Paragraph (d) of the moratorium permits adjustment in the rates of pay established by Articles I, II, III and IV of the agreement under certain circumstances. The same is true of separation allowances referred to in paragraph (e). Proposals which may properly be classified as dealing with such matters are permissible. However, that part of paragraph (e) relating to stabilization of employment, as interpreted by the organization, would

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appear to render the prior provisions of the agreement virtually meaningless, unless qualified by the specific prohibitions of paragraph (b). It is necessary, therefore, to harmonize the right to progress proposals dealing with the stabilization of employment with the other provisions of Article VI in order to give effect to all of the provisions of that Article. To achieve this accommodation, Article VI must be construed to mean that proposals may not be served or progressed under the claim that they deal with stabilization of employment if they would necessarily produce results prohibited by paragraphs (a), (b) or (c) of the moratorium. On the other hand, proposals reasonably related to stabilization of employment which may be effectuated without necessarily coming into conflict with paragraphs (a), (b) and (c) may be served and progressed under paragraph (e). Thus, a proposal which could not be adopted without resulting in an increase in time paid for but not worked would be barred, even though it might result in stabilization of employment.

Essentially, this approach involves an analysis of any proposal claimed to deal with stabilization of employment, in terms of its likely results if adopted. If the probable results would be contrary to the provisions of the first three paragraphs of the moratorium, the proposal is barred. Otherwise, the proposal may be progressed as provided in paragraph (e).

This construction of Article VI is consistent with generally accepted standards for contract interpretation. The relevant principle is stated in 3 *Williston on Contracts* 1779, as follows:

"The writing will be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose."

The principle that the general purpose of the agreement controls the construction of its parts is stated as follows by Professor Williston:

"The court will if possible give effect to all parts of the instrument and an interpretation which gives a reasonable meaning to all its provisions will be preferred to one which leaves a portion of the writing useless and inexplicable; and if this is impossible an interpretation which gives effect to the main apparent purpose of the contract will be favored." (3 *Williston on Contracts* 1781-82.)

These principles are, of course, applicable to railroad labor agreements such as that involved in this dispute. Such agreements "must always be considered as a whole. Each section must be considered in relation to all other sections \* \* \*." First Division Award No. 13250, Referee O'Malley.

In a memorandum attached to Award No. 5080 of the First Division, Justice Royal A. Stone of the Supreme Court of Minnesota also said such agreements

"\* \* \* must be considered as a whole, each part interpreted in whatever light may be shed on it by any or all others \* \* \* and applied by the same standards of decision as other written contracts. If such agreements are not to be so interpreted and applied, they are not contracts."

In First Division Award No. 15042, Referee Robert O. Boyd said:

"Single provisions of an agreement should not be considered separately, but each provision of an agreement must be applied in reference to all other provisions in order to give effect to each in accordance with the intent of the parties \* \* \*."

"In interpreting an agreement special attention should be given to the expressed intent of the parties when the agreement was formed. \* \* \*"

In First Division Award No. 16781, Referee Charles Loring, formerly Chief Justice of the Supreme Court of Minnesota, said:

"On account of the apparent conflict between the last paragraph of Section (c) and first paragraph thereof, the above section must be construed as a whole, each part in the light of the rest and so far as reasonable giving effect to all provisions. If the last paragraph of sub-division (c) be given the effect contended for by the claimant, it is then in conflict with the preceding paragraphs thereof. \* \* \* So applied, we use the rule of interpretation well established by the courts and by this division. Reasonably construed together, the first paragraph of (c) applies to the facts now before us and the last does not."

This accommodation of that part of paragraph (e) referring to proposals and agreements dealing with stabilization of employment to the specific prohibitions of paragraph (b) may be accomplished also by a proper definition of stabilization of employment.

Stabilization of employment, in its accepted meaning and as used in the agreement, means that available work will be evenly distributed throughout the year to the extent possible so that employees necessary to meet this work load will have stable employment. In other words, employment will be stabilized to the extent that employment opportunities can be stabilized. To the extent that work cannot be handled in this manner, i.e., cannot be stabilized, stabilization of employment does not mean that employees must be kept on when there is nothing for them to do. A proposal properly related to stabilization of employment, therefore, must have as its primary objective the elimination of avoidable fluctuations in work opportunities, and must not be primarily designed to provide payments for time not worked.

This definition of stabilization of employment is con-

sistent with its commonly accepted meaning. In *Labor Dictionary* by P. H. Casselman, Professor of Industrial Relations at the University of Ottawa, employment stabilization is defined as follows:

"The principle and practice of reducing fluctuations in employment in an enterprise, industry or area. The following are some of the policies that have been suggested to stabilize employment on the employer level: 1) increase sales in slack periods, 2) develop new uses for old products which would follow a different seasonal pattern, 3) diversify output or go into a different line of business in which peak activity would coincide with the seasonal slack in the old line, 4) produce for stock during slack seasons, 5) bring out new models in the market during normal dull seasons and 6) lower prices in dull seasons to stimulate sales."

Much this same meaning is given to "stabilization of employment" by the National Industrial Conference Board. In No. 27 of its publications entitled *Studies in Personnel Policy*, the subject of Reducing Fluctuations in Employment was discussed. Under the heading "General Aspects of Employment Stabilization Program," the following discussion appears:

"A successful employment stabilization program requires close cooperation between the production and sales divisions, the higher executive groups, the personnel departments and the entire supervisory force to deal effectively with both internal and external factors causing employment irregularities. The various measures for stabilizing employment may then be roughly classified into policies of (1) production, (2) distribution, and (3) personnel." (p. 8.)

Under the heading "Measures for Stabilizing Employment" the following summary statement is made:

"The principal methods used by the 203 reporting companies have been tabulated on an industry basis and further subdivided by capital and consumer goods in Table 2.

"Manufacture for stock, either of completed units, sub-assemblies or parts, the training and transfer of workers and the use of the flexible work week are the methods most frequently employed to achieve employment regularity in the companies studied. Other measures utilized by considerable groups of companies are: introduction of new products or models, creation of consumer demand by special advertising campaigns and inducements to place orders in off-seasons."

This study, therefore, clearly shows that stabilization of employment is generally understood to refer to efforts to distribute the work load as evenly as possible throughout the year in order to provide regular employment. The phrase is not used in connection with programs which guarantee compensation when there is no work to perform. Thus, the NICB study referred to is divided into three parts. Part One is entitled "General Aspects of Employment Stabilization Programs", Part Two is headed "Case Studies in Employment Stabilization," while Part Three is entitled "Income-and-Employment-Security Programs." This treatment shows that Stabilization of Employment programs are quite distinct from Employment or Income Security programs.

Paragraph (e) of Article VI also supports this definition of stabilization of employment. (That paragraph includes stabilization of employment and separation allowances as matters which may be dealt with where they do not produce results prohibited by paragraphs (a), (b) and (c) of the moratorium.) This shows that the parties did not regard the subject of separation allowances as one which could be pursued under the category of proposals dealing with stabilization of employment. In other words, stabilization of employment was not intended to be comprehensive enough to include separation allowances.

Separation allowances, of course, constitute a form of continued compensation for employes whose services are

no longer needed. Such allowances are normally paid to employes whose services are terminated because of technological improvements, changes in work methods or other comparable developments. In effect such allowances constitute a form of income security or pay for time not worked. Thus, the fact that stabilization of employment was used in a sense which made it necessary to provide separately for separation allowances demonstrates that stabilization of employment was not intended to comprehend proposals related in purpose and effect to separation allowances. Proposals primarily designed to require pay for time not worked, therefore, would be improper "stabilization of employment" proposals.

Thus, the restriction of proposals and agreements dealing with stabilization of employment to those which do not normally result in pay for time not worked is consistent with the standards of construction referred to above and also with the meaning normally attributed to that phrase.

Another closely related general principle which is essential to any determination as to whether or not a particular proposal is barred by the moratorium is that substance and probable effect, not form, are the controlling factors. It may be argued, for example, that a proposal which contemplates that employes of the carrier shall be used to build all diesel locomotives or other items of equipment does not come within the bar of the moratorium. If it is a fact, however, that patent restrictions or the economic impracticability of following such a course would require continued purchase of such equipment from other manufacturers, the rule in question would require substantial payments for time not worked. In substance, it would be similar to a rule which expressly required the carrier to pay its employes an amount equivalent to what they would have earned if they had been used in place of the manufacturer's employes when diesels are purchased.

from manufacturers. A proposal so phrased would obviously be barred by paragraph (b)'s provisions regarding time paid for but not worked. The fact that the proposal actually served, regardless of its form, would produce this same result makes it subject to the moratorium provisions of Article VI. The moratorium would be of little effect if what it prohibits could be accomplished by merely changing the form in which proposals are made in order to conceal their inevitable effect.

This interpretation of the moratorium is supported by the awards of Special Board of Adjustment No. 215, Honorable Nathan Cayton, Chairman, in Case No. 1 and Case No. 10, attached hereto as Exhibits C and D. Award No. 1 is particularly relevant since it concerns a proposal providing for "A stabilized season of employment" for the employees involved. Judge Cayton held that this proposal was barred by the moratorium since it would, in effect place "upon the Carriers a potential liability for time not worked \* \* \*". In other words, Judge Cayton clearly recognized that the substance and effect, rather than the form, of the proposals should determine their status under the moratorium and that stabilization of employment does not include proposals which might require pay for time not worked.

These principles, applied to the proposal in question, compel the conclusion that the notice served by the organization is barred by the moratorium.

As stated, the notice served by the Order of Railroad Telegraphers would require prior approval by the organization before any positions in existence on December 3, 1957, could be abolished or discontinued. There is no mystery, of course, regarding the purpose of this proposal. It is designed to require the carrier to maintain positions for which there is no need and thus to require payment for time not worked.

During the past few years, this Carrier has undertaken to reduce its station forces to levels consistent with the volume of work to be performed by the employees in question. This process has resulted in some instances in the abolishment or discontinuance of positions held by employees represented by the organization. Thus, since December 3, 1957, such positions have been abolished, as shown by Exhibit E hereto. These positions have been abolished because of the indisputable fact that the employees holding such positions had very little, if any, work to perform. The majority of all such abolished positions, particularly the agent positions, were abolished only after extensive hearings before state regulatory agencies in which the Order of Railroad Telegraphers participated fully, and the positions were abolished only after receipt of specific instructions so to do from the state regulatory commissions involved, pursuant to findings that the services of full time agents were not required to meet the transportation needs of the public. Obviously, the proposed rule is designed to give the organization the right to nullify this action and to require the re-establishment of the positions involved, thus resulting in substantial payments for time not worked.

The carrier has also obtained authority from and been directed by the South Dakota and Iowa State Commissions to place a central agency plan in effect for certain areas in those states. This authority was granted by the Commissions, over the objections of the Order of Railroad Telegraphers, on the basis of its conclusion that an agent at all of the stations involved is not necessary to adequately and efficiently serve the public, and that the maintenance of agency service in excess of that necessary would materially decrease the ability of the petitioner to efficiently serve the public. The proposed rule is obviously intended to permit it to over-ride the action of the state authorities

and to require the carrier to maintain positions which are not needed.

It is apparent, therefore, that one of the purposes of the proposed rule is to require the carrier to re-establish the positions which have been abolished since December 3, 1957 and to re-establish and maintain those which were subject to the orders of the Iowa and South Dakota Commissions. It is equally clear that the employees holding such positions would have little, if any, work to perform and would thus be paid for time not worked. The proposed rule, therefore, is barred by the provisions of Article VI of the November 1, 1956 Agreement.

It may be argued, of course, that the proposed rule does not require the re-establishment of such positions and does not prohibit the abolishment of positions but merely requires prior approval by the organization. It would be extremely naive, however, to assume that the organization wishes to have a veto power over the abolishment of positions in existence as of December 3, 1957, merely for the purpose of approving the action taken by the carrier, as described above. In fact, representatives of the organization have made it abundantly clear that their purpose is to require the re-establishment of positions abolished since December 3, 1957, and to prohibit any future discontinuance of positions now in existence, regardless of service requirements. This is evident from the fact that in practically all instances referred to above, the organization has opposed, in every possible way, the carrier's efforts to revise its station forces to fit actual transportation service requirements. It must be assumed, therefore, that the organization would exercise the veto power inherent in the proposed rule in accordance with its previously manifested attitude regarding the abolishment of positions. It is submitted, therefore, that the proposed rule would inevitably require substantial payments for time not worked.

The rule in question would also require payments for time not worked when positions are abolished or discontinued because of emergency conditions.

As a result of the recommendations of Emergency Board No. 106, the August 21, 1954 agreement between the carriers and the organizations which appeared before that Board, including the O.R.T., undertook to deal with the matter of notice when forces were reduced because of emergency conditions. Article VI of that Agreement, which is in effect on this Carrier, provided as follows:

"Rules, agreements or practices, however established, that require more than sixteen hours' advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed."

The proposed rule does not except employees affected by force reductions in emergency conditions such as those described in the August 21, 1954 agreement. It must be assumed, therefore, that the requirement of prior agreement with the organization is to supersede the 16-hour rule. This would mean that the carrier, suddenly confronted with an emergency which necessitates suspension of its operations, would be compelled to negotiate an agreement with the organization before positions held by employees represented by the organization could be abolished or discontinued. Such procedure would inevitably require more time than the 16-hour period provided by the present rule. In the meantime, it would be necessary

to continue to pay the employees involved regardless of whether there is any work for them to perform. The proposed rule would thus produce substantial payments for time not worked when positions must be abolished or discontinued because of emergency conditions.

### Conclusion.

The foregoing discussion demonstrates that the notice served by The Order of Railroad Telegraphers on December 19 and December 23, 1957, would require substantial payments for time not worked. As such, it is not reasonably related to stabilization of employment as that phrase is used in Article VI of the Agreement of November 1, 1956 and is barred by the moratorium provisions of said article.

While subsequent to the execution of the agreement of November 1, 1956 a subsequent agreement or understanding was reached between the parties to such agreement that disputes arising thereunder would be submitted to a Committee established to hear and decide such disputes, in view of the fact that an attempt has been made by another carrier to submit an identical dispute to the Committee so established and the Committee refused to consider the dispute, no useful purpose could or would be served by attempting to submit the same controversy again to this committee.

The carrier respectfully requests that this Division render an award sustaining the position of the carrier in this dispute that the notices served by The Order of Railroad Telegraphers, Exhibits "B" and "B-1" hereto, were and are in contravention of Article VI of the November 1, 1956 Agreement, Exhibit "A" hereto.

All information contained herein has previously been submitted to the employees and is hereby made a part of the particular question here in dispute.

FOR THE CHICAGO AND NORTH  
WESTERN RAILWAY COMPANY:

T. M. VAN PATTEN,  
*Director of Personnel.*

Chicago, Illinois, August 22, 1958.

**NON-OPS  
NOVEMBER 1, 1956**

**AGREEMENT DATED NOVEMBER 1, 1956**

**BETWEEN RAILROADS REPRESENTED BY THE**

**EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES**

**AND THE EMPLOYEES OF SUCH RAILROADS REPRESENTED BY THE**

**EMPLOYEES' NATIONAL CONFERENCE COMMITTEE,**

**ELEVEN COOPERATING RAILWAY LABOR ORGANIZATIONS**

*Carriers Exhibit "A"*

MEDIATION AGREEMENT

This agreement made this 4th day of November, 1956, by and between the participating carriers listed in Exhibits A, B and C, attached hereto and hereby made a part hereof, and represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees shown thereon and represented by the Railway Labor Organizations signatory hereto, through the Employees' National Conference Committee, Eleven Cooperating Railway Labor Organizations, witnesseth:

IT IS AGREED:ARTICLE I - INITIAL WAGE INCREASE

Effective November 1, 1956, all hourly, daily, weekly, monthly and piece-work rates of pay for employees covered by this agreement will be increased in the amount of 10 cents per hour applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Article I shall be applied as follows:

(a) Hourly Rates -

Add 10 cents to the existing hourly rates of pay.

(b) Daily Rates -

Determine the equivalent hourly rate by dividing the existing daily rate by the number of hours comprehended by the daily rate. 10 cents per hour multiplied by the number of hours comprehended by the daily rate shall be added to the existing daily rate.

(c) Weekly Rates -

Determine the equivalent hourly rate by dividing the existing weekly rate by the number of hours comprehended by the weekly rate. 10 cents per hour multiplied by the number of hours comprehended by the weekly rate shall be added to the existing weekly rate.

(d) Monthly Rates -

Determine the equivalent hourly rate by dividing the existing monthly rate by the number of hours comprehended by the monthly rate. 10 cents per hour multiplied by the number of hours comprehended by the monthly rate shall be added to the existing monthly rate.

(e) Piece Work -

Adjustment of piece-work rates of pay shall be based on the amount of increase applicable to the basic hourly rate for the class of work performed. Where piece-work rates of pay are in effect on carriers having special rules as to the application of any increase, or decrease, in such rates, such rules shall apply. In the absence of any definite rule governing, the equivalent of 10 cents per hour shall be added to the unit piece-work price.

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(f) Red Caps -

Rates of pay, or guarantees, for Red Caps will be increased by 10 cents per hour. This amount will be multiplied by the number of hours paid for, and this sum will be added to the earnings of Red Caps regardless of the method of determining their earnings.

(g) Minimum Daily Increases -

The increases in rates of pay described in paragraphs (a) to (f), inclusive, shall be not less than eight times the applicable increases per hour for each full time day of eight hours, required to be paid for by the rules agreement. In instances where under existing rules agreement an employee is worked less than eight hours per day, the increase will be determined by the number of hours required to be paid for by the rules agreement.

(h) Deductions -

In so far as concerns deductions, which may be made from the rates resulting from the increase herein granted, under Section 3(m) of the Fair Labor Standards Act of 1938, they may continue to be made to the extent that such deductions were being legally made as of August 31, 1941.

(i) Application of Wage Increase -

The increase in wages provided for in this Article I shall be computed in accordance with the wage or working conditions agreement in effect between each carrier and each labor organization of employees, and in instances where fixed daily, weekly, or monthly rates are paid for all services rendered, the increase in wages shall be applied in such manner as will give effect to the number of hours used in fixing said rates and to the equivalent hours for special allowances included in said rates. Special allowances not included in said rates will not be increased.

(j) Coverage -

All employees who were on the payroll of the carrier on November 1, 1956, or who were hired subsequent thereto, regardless of whether they are now in the employ of the carrier, shall receive the amounts to which they are entitled under this Agreement. Overtime hours will be computed in accordance with the individual schedules for all overtime hours paid for.

ARTICLE II - SECOND-YEAR INCREASE

Effective November 1, 1957, all hourly, daily, weekly, monthly and piece-work rates of pay for employees covered by this Agreement will be increased in the amount of 7 cents per hour, applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Article II shall be applied in the same manner as provided for in Article I.

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**ARTICLE III - THIRD-YEAR INCREASE**

Effective November 1, 1958, all hourly, daily, weekly, monthly and piece-work rates of pay for employees covered by this agreement will be increased in the amount of 7 cents per hour, applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Article III shall be applied in the same manner as provided for in Article I.

**ARTICLE IV - COST-OF-LIVING ADJUSTMENT**

(a) Wage rates resulting from the increases provided for in Articles I, II and III of this Agreement, without taking into consideration cost-of-living adjustments, will not be reduced under this Article IV. However, such wage rates are subject to a cost-of-living adjustment to be made on the dates provided in paragraph (b) whereby the adjusted rate as of May 1 and November 1 each year will exceed the rates resulting from the increases provided for in Articles I, II and III by 1¢ per hour for each five-tenths of a point by which the index specified in paragraph (b) as of March 15 and September 15, respectively, each succeeding year exceeds the index of 117.1 for September 15, 1956. The initial allowance of 1¢ per hour made when the index reaches 117.6 will not be eliminated unless the index reaches the 117.1 level or less.

(b) The cost-of-living adjustment will be determined in accordance with changes in the "Consumers' Price Index for Moderate Income Families for Large Cities Combined" - "All Items" (1947-1949 = 100) - as published by the Bureau of Labor Statistics, U. S. Department of Labor, and hereafter referred to as the HLS Consumers' Price Index. The cost-of-living adjustment shall be made commencing May 1, 1957, and each sixth month thereafter based on the HLS Consumers' Price Index as of March 15, 1957, and the HLS Consumers' Price Index each sixth month thereafter as illustrated by the following table:

<u>HLS Consumers' Price Index as of:</u>	<u>Effective Date of Adjustment - first pay period on or after:</u>
March 15, 1957	May 1, 1957
September 15, 1957	November 1, 1957
March 15, 1958	May 1, 1958
September 15, 1958	November 1, 1958
March 15, 1959	May 1, 1959
September 15, 1959	November 1, 1959

The cost-of-living adjustment, when provided for, shall remain in effect to date of subsequent adjustment. The cost-of-living adjustment will be applied as a wage increase or a wage reduction in the same manner as the wage increase provided for in Articles I, II and III hereof.

(c) The adjustments are to be made on the dates as illustrated in paragraph (b) of this Article in the amounts illustrated in the following examples:

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ELS Consumers' Price IndexCost-of-Living Allowance

117.1 and less than 117.6	None
117.6 and less than 118.1	1 cent per hour
118.1 and less than 118.6	2 cents per hour
118.6 and less than 119.1	3 cents per hour
119.1 and less than 119.6	4 cents per hour

and so forth, with corresponding 1 cent per hour adjustment for each .5 point change in the index.

(d) In the event the Bureau of Labor Statistics does not issue the specified ELS Consumers' Price Index on or before the effective dates specified in paragraph (b), the cost-of-living adjustment will become effective on the first day of the pay period during which the index is released.

(e) No adjustments, except as provided in paragraph (f), shall be made because of any revision which may later be made in the published figures of the ELS Consumers' Price Index for any base month.

(f) The parties to this Agreement agree that the continuance of the cost-of-living adjustment is dependent upon the availability of the official monthly ELS Consumers' Price Index in its present form and calculated on the same basis as the index for September 15, 1956, except that, if the Bureau of Labor Statistics, U. S. Department of Labor, should during the effective period of this Agreement revise or change the methods or basic data used in calculating the ELS Consumers' Price Index in such a way as to affect the direct comparability of such revised or changed index with the index for September 15, 1956, then that Bureau shall be requested to furnish a conversion factor designed to adjust to the new basis the base index for September 15, 1956, described in paragraph (b) hereof.

ARTICLE V - HEALTH AND WELFARE

(a) In addition to the wage adjustments provided for in Articles I, II, III and IV of this Agreement, each carrier party to this agreement will pay to The Travelers Insurance Company for each month after October, 1956, the following:

(1) The carriers parties to this Agreement who are parties to The Travelers Insurance Company Group Policy Contract No. GA-23000 will pay \$10.9395 (\$11.05 less one per cent for railroad costs) per month for each employee who is a "Qualifying Employee" as defined in the Group Policy Contract and who shall have rendered compensated service to the carrier in such month. The payments required by this paragraph of such carriers shall be in lieu of the payments required under paragraph 2(a) of the Health and Welfare Agreement between the parties hereto made at Chicago, Illinois on December 21, 1955.

(2) All carriers parties to this Agreement and not parties to The Travelers Insurance Company Group Policy Contract No. GA-23000 will pay \$4.2075 (\$4.25 less one per cent

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for railroad costs) per month for each of its employees represented by any of the organizations signatory hereto who would be a "Qualifying Employee" as defined in The Travelers Insurance Company Group Policy Contract No. GA-23000 if the carrier were a party to such Group Policy Contract, and who renders any compensated service to the carrier in such month. The payments required by this paragraph of such carriers shall be in addition to the payments required under paragraph 2(b) of the Health and Welfare Agreement between the parties hereto made at Chicago, Illinois, on December 21, 1955.

NOTE: In the application of paragraphs (1) and (2) above, carriers who are parties to The Travelers Insurance Company Group Policy Contract No. GA-23000 with respect to some, but not all their employees represented by organizations signatory hereto, shall be governed by paragraph (1) as to employees covered by such Group Policy Contract and by paragraph (2) as to employees not covered by such Group Policy Contract.

(b) The parties hereto will secure expansion of the terms of The Travelers Insurance Company Group Policy Contract No. GA-23000 so as to provide, effective December 1, 1956, to dependents (as defined in The Travelers Insurance Company Group Policy No. GA-23111) of all employees for whom payments are required to be made under paragraph (1) or (2) of Section (a) of this Article, as nearly as practicable, the same Hospital, Medical and Surgical benefits now provided to "Qualifying Employees" under said Group Policy Contract No. GA-23000 in so far as the funds available will permit consistent with a reasonable margin of safety.

#### ARTICLE VI - DURATION OF AGREEMENT

The purpose of this Agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraphs (d) and (e) of this Article, no carrier or organization, party to this Agreement, will serve any notice or progress any pending notice to -

- (a) Increase or decrease rates of pay established by Articles I, II, III and IV of this Agreement.
- (b) Increase or decrease the rate of compensation provided in existing agreements or understandings, or eliminate or establish agreements providing the rate of compensation, covering overtime payments, arbitrary payments, Sunday or holiday payments, time paid for but not worked, or increase or decrease the number of paid holiday or paid vacation days.

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- (c) Increase or decrease the amount of payments required to be made by the Agreement of December 21, 1955, and Article V of this Agreement for hospital, medical and surgical benefits for the employees and their dependents.
- (d) This Article VI does not prevent adjustments under normal processes on the individual carriers in the rates of pay of individual positions; correction of inequities as between rates for different individual positions on a particular railroad; or negotiation of rates for new positions or positions where the duties or responsibilities have been or are changed. This Article VI will not debar management and committees on individual railroads from agreeing upon any subject of mutual interest.
- (e) This Article VI does not prevent the progresssing of pending notices, the serving of notices and the negotiation of agreements dealing with stabilization of employment, separation allowances or other matter not prohibited by the foregoing provisions of this Article VI.

#### ARTICLE VII - APPROVAL

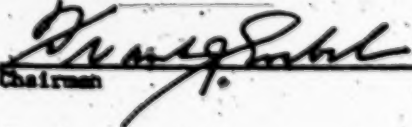
This Agreement is subject to approval of the courts with respect to carriers in the hands of receivers or trustees.

#### ARTICLE VIII - EFFECT OF THIS AGREEMENT

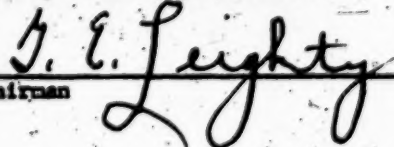
This Agreement is in settlement of the dispute growing out of notices served on the carriers listed in Exhibits A, B and C on or about June 20, 1956, and to proposals served by the individual railroads on organization representatives of the employees involved on or about the same date, and shall be construed as a separate agreement by and on behalf of each of said carriers and its employees represented by each of the organizations signatory hereto, and shall remain in effect until October 31, 1959 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended, except that notices may be served before the expiration of the three-year period, provided such notices do not contemplate effective dates earlier than November 1, 1959.

SIGNED AT CHICAGO, ILLINOIS THIS 1ST DAY OF NOVEMBER, 1956.

For the participating carriers  
listed in Exhibit A:

  
Chairman

Employees' National Conference  
Committee, Eleven Cooperating  
Railway Labor Organizations:

  
Chairman

L. D. FoxE. P. HangermanJ. E. JonesH. W. KnightR. W. PickardG. C. WhiteFor the participating carriers  
listed in Exhibit B:L. P. Loomis

Chairman

J. E. WolfeC. M. KelleyL. L. HomerE. J. CasanovaJ. H. HallmanL. B. HerdmanE. J. Casanova

Railway Employees' Department, A.F. of L.

Michael Fox  
President

International Association of Machinists

Earl Melton  
General Vice PresidentInternational Brotherhood of Boiler-  
makers, Iron Ship Builders, Blacksmiths,  
Forgers and HelpersW. A. Calvin  
International President

Blacksmiths - Railroad Division

Edward H. Wolfe  
Vice President - (Blacksmiths)Sheet Metal Workers' International  
AssociationC. D. Bruno  
General Vice PresidentInternational Brotherhood of Electrical  
WorkersJ. Duffy  
International Vice President

Brotherhood Railway Carmen of America

A. B. Bunker  
General PresidentInternational Brotherhood of Firemen,  
 Oilers, Helpers, Roundhouse and Railway  
 Shop LaborersA. E. Mat  
President

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● For the participating carriers  
listed in Exhibit C:

Caution  
Chairman

W. B. Baker

B. B. Bryant

J. K. Day, Jr.

M. S. Schell

L. B. Tolleson

Brotherhood of Railway and Steamship  
Clerks, Freight Handlers, Express and  
Station Employees

E. M. Harrison  
Grand President

Brotherhood of Maintenance of Way  
Employees

T. C. Carroll  
President

The Order of Railroad Telegraphers

J. E. Leighty  
President

Brotherhood of Railroad Signalmen of  
America

Gene Clark  
President

Hotel & Restaurant Employees and  
Bartenders International Union

Richard W. Smith  
Vice President

WITNESS:

Francis A. Orin  
Member,  
National Mediation Board

Robert Edwards  
Member,  
National Mediation Board

**WESTERN RAILROADS**

LIST OF WESTERN CARRIERS REPRESENTED BY THE WESTERN CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES DATED ON OR ABOUT JUNE 20, 1956, SERVED UPON VARIOUS INDIVIDUAL WESTERN RAILROADS BY THE GENERAL CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES, OF THE ORGANIZATIONS LISTED BELOW, OF "DESIRE TO CHANGE AND INCREASE ALL EXISTING RATES OF PAY BY THE ADDITION THERETO OF TWENTY-FIVE (25) CENTS PER HOUR, EFFECTIVE AUGUST 1, 1956, THIS INCREASE TO BE APPLIED TO ALL TYPES OF RATES SO AS TO GIVE EFFECT TO THE REQUESTED INCREASE OF TWENTY-FIVE (25) CENTS PER HOUR", AND TO PROPOSALS SERVED BY THE INDIVIDUAL WESTERN RAILROADS ON ORGANIZATION REPRESENTATIVES OF THE EMPLOYEES INVOLVED THAT EXISTING RATES OF PAY BE DECREASED, EFFECTIVE AUGUST 1, 1956, IN THE AMOUNTS SET FORTH IN SUCH PROPOSALS.

**ORGANIZATIONS**

1. International Association of Machinists
2. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
3. Sheet Metal Workers' International Association
4. International Brotherhood of Electrical Workers
5. Brotherhood Railway Carmen of America
6. International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers

**ORGANIZATIONS**

7. Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees
8. Brotherhood of Maintenance of Way Employees
9. The Order of Railroad Telegraphers
10. Brotherhood of Railroad Signalmen of America
11. Hotel & Restaurant Employees and Bartenders International Union (Joint Council, Dining Car Employees Union)

This authorization is co-extensive with provisions of current schedule agreements applicable to employees represented by the organizations listed above. Subject to the foregoing, and to indicated footnotes, the classes of employees covered by this authorization are indicated by "x" inserted in Columns 1 to 11, inclusive, below:

**NOTE:** - This authorization is subject to the stipulation contained in Letter of Understanding dated November 1, 1956.

EASTERN CARRIERS' CONFERENCE COMMITTEE  
 WESTERN CARRIERS' CONFERENCE COMMITTEE  
 SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEE

Chicago, Illinois  
 November 1, 1956

Mr. G. E. Leighty  
 Chairman  
 Employes' National Conference Committee  
 Eleven Cooperating Railway Labor Organizations  
 Chicago, Illinois

Dear Sir:

Referring to National Mediation Board Case No. A-5256:

It is understood that the language used in the authorizations of the Eastern, Western and Southeastern carriers, reading:

"This authorization is co-extensive with provisions of current schedule agreements applicable to employes represented by the organizations listed above"

is subject to the understanding that the parties have no intention of changing by expanding or contracting the scope of previous national wage increase agreements.

It is further understood that Article V of the Agreement signed this date covering dependent health and welfare benefits is subject to the provision now contained in appendices to The Travelers Insurance Company Group Policy Contract No. GA-23000 reading as follows:

"(Participation of individual carriers listed herein, as to the respective classes of employes, is limited to positions covered by the rates of pay rules of the individual schedule agreements. This shall be construed to mean that this policy contract shall cover and apply to the occupants of those positions which are covered by the Agreement of March 19, 1949, generally known as the 40-Hour Week Agreement, including subsequent agreements and understandings relating thereto. Subject to the foregoing the classes of employes covered by such participation are indicated by 'x' inserted in the appropriate columns below.)"

Please indicate your acceptance in the space indicated below.

Yours very truly,

EASTERN CARRIERS' CONFERENCE COMMITTEE

By:

  
 Chairman

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## WESTERN CARRIERS' CONFERENCE COMMITTEE

By: L. P. Loomis  
Chairman

## SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEE

By: C. Ambrose  
Chairman

## ACCEPTED:

EMPLOYEES' NATIONAL CONFERENCE COMMITTEE  
ELEVEN COOPERATING RAILWAY LABOR ORGANIZATIONSBy: J. E. Leighty  
Chairman

## WITNESS:

Francis A. O'Neil  
Member,  
National Mediation BoardLawrence Edwards  
Member,  
National Mediation Board

**EASTERN RAILROADS REPRESENTED BY THE EASTERN CARRIERS' CONFERENCE COMMITTEE IN THE HANDLING OF REQUEST OF ELEVEN NON-OPERATING RAILWAY LABOR ORGANIZATIONS DATED JUNE 20, 1956 -**

"to change and increase all existing rates of pay by the addition thereto of twenty-five (25) cents per hour, effective August 1, 1956, this increase to be applied to all types of rates so as to give effect to the requested increase of twenty-five (25) cents per hour."

**ORGANIZATIONS**

- |  |   |
|--|---|
| (1) International Association of Machinists  | (7) Brotherhood of Railway and Steamship Clerks,<br>Freight Handlers, Express and Station Employees                     |
| (2) International Brotherhood of Boilermakers, Iron Ship<br>Builders, Blacksmiths, Forgers and Helpers | (8) Brotherhood of Maintenance of Way Employees   |
| (3) Sheet Metal Workers' International Association   | (9) The Order of Railroad Telegraphers  |
| (4) International Brotherhood of Electrical Workers  | (10) Brotherhood of Railroad Signalmen of America   |
| (5) Brotherhood Railway Carmen of America  | (11) Hotel and Restaurant Employees and Bartenders<br>International Union (Joint Council Dining<br>Car Employees Union) |
| (6) International Brotherhood of Firemen, Oilers, Helpers,<br>Roundhouse and Railway Shop Laborers     |   |

**ALSO, CARRIERS' CONCURRENT WAGE DECREASE PROPOSALS, AS FOLLOWS:**

"Decrease all existing rates of pay by six and one-half cents per hour (three cents per hour as pertains to Dining Car Employees) effective August 1, 1956, this decrease to be applied to all types of rates so as to give effect to the requested decrease of six and one-half cents per hour (three cents per hour as pertains to Dining Car Employees)."

This authorization is co-extensive with provisions of current schedule agreements applicable to employees represented by the organizations listed above. Subject to the foregoing, and to indicated footnotes, the classes of employees covered by this authorization are indicated by "x" inserted in the appropriate column below:

**NOTE:** This authorization is subject to the stipulation contained in Letter of Understanding dated November 1, 1956.

RAILROADS	R.E.D., A.F.ofL. - C.I.O.						Clerks	M. of W. Employees	Telegraphers	Signalmen	Dining Car Employees
	Mechanists	Boilermakers and Blacksmiths	Sheet Metal Workers	Electrical Workers	Carmen	Firemen & Oilers					
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Akron & Barberton Belt RR								x			
Akron, Canton & Youngstown RR Co	x	x	x	x	x	x	x	x	x	x	
Ann Arbor Railroad Co	x	A	x	x	x	x	x	x	B	x	
Baltimore & Ohio RR Co	C	C	C	G	C	x	x	x	x	x	
B & O Chicago Terminal RR Co	x	x	x	x	x	x	x	x	x	x	
B & O New York Terminals											
Staten Island Rapid Transit Ry Co	x	x	x	x	x	x	x	x	x	x	
Dayton & Union											
Strouds Creek & Muddlety	x										
Locust Point Grain Elevator								x			
Camden Warehouses, Inc							x				
Blue Line Transfer, Baltimore, Md.							x				
B & O Warehouse, Cincinnati, Ohio							x				
Terminal Storage Co., Washington, D. C.							x				
Curtis Bay Railroad							x				
Bessemer & Lake Erie RR Co	D	D	D	D	D	D	x	x	x	x	
Boston & Maine Railroad	x	x	x	x	x	x	x	x	x	x	
Boston Terminal Corporation							x				
Brooklyn Eastern District Terminal	x						x				
Bush Terminal Railroad Co							x				
Canadian National Railways											
Canadian National Rys. - Lines in New England	x	x	x	x	x	x	x	x	x	x	
United States & Canada RR	x	x	x	x	x	x	x	x	x		
Shamplain & St. Lawrence RR	x	x	x	x	x	x	x	x	x		
Canadian National Rys. - State of New York	x	x	x	x	x		x	x	x		
St. Clair Tunnel Co.	x	x	x	x	x		x		x		

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RAILROADS		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Canadian Pacific Ry Co		x	x	x	x	x	x	x	x	x	x	
Central Railroad Company of New Jersey	(G)	x	x	x	x	x	x	x	x	x	x	
Central Vermont Ry Inc		x	x	x	x	x	x	x	x	x		
Chicago Union Station Co		x			x		x	x	x	x		
Cincinnati Union Terminal Co		x	x	x	x	x		x	x	x	x	
Dayton Union Ry Co						x		x	x	x	x	
Detroit Terminal RR Co		x	x			x	x	x	x	x	x	
Delaware & Hudson RR Corporation		x	x	x	x	x	x	x	x	x	x	x
Delaware, Lackawanna & Western RR Co		x	x	x	x	x	x	x	x	x	x	x
Detroit, & Toledo Shore Line RR Co		x	x	x	x	x	x	x	x	x	x	
Detroit, Toledo & Ironton RR Co		x	x	x	x	x	x	x	x	x	x	
Erie Railroad Company		x	x	x	x	x	x	x	x	x	x	x
Grand Trunk Western RR Co		x	x	x	x	x	x	x	x	x	x	x
Hoboken Shore RR Co						x			x			
Indianapolis Union Ry Co		x	x		x	x		x	x	x	x	
Lake Terminal RR Co	(D)							x				
Lehigh & New England RR Co		x	x	x	x	x		x	x			
Lehigh Valley RR Co		x	x	x	x	x	x	x	x	x	x	x
Long Island Rail Road Co		x	x	x	x	x	x	x	x	x	x	
Maine Central RR Co		x	x	x	x	x	x	x	x	x	x	
Portland Terminal Co		x	x	x	x	x	x	x	x	x	x	
Monon RR Co		x	x	x	x	x	x	x	x	x	x	x
Monongahela Ry Co		x	x	x	x	x	x	x	x	x	x	
Monongahela Connecting RR Co	(D)				x	x		x				
Montour RR Co		x	x	x	x	x	x		x			
Newburgh & South Shore Ry Co	(D)	x	x	x	x	x	x	x				
<u>New York Central System</u>												
<u>New York Central RR Co</u>												
Eastern District (Excl. Boston Division)		x	x	x	x	x	x	x	x	x	x	x
Boston Division		x	x	x	x	x	x	x	x	x	x	x
Grand Central Terminal		x	x	x	x	x	x	x	x	x	x	
Buffalo Stock Yards								x				
Western District		x	x	x	x	x	x	x	x	x	x	F
Ohio Central Lines		x	x	x	x	x	x	x	x	x	x	
Northern District		x	x	x	x	x	x	x	x	x	x	
Southern District		x	x	x	x	x	x	x	x	x	x	
Peoria & Eastern		x	x	x	x	x	x	x	x	x	x	
L & J B & R R		x	x	x	x	x	x	x	x	x	x	
Indiana Harbor Belt RR Co		x	x	x	x	x	x	x	x	x	x	

RAILROADS	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
New York Central System (continued)											
Chicago River & Indiana RR Co	x	x	x	x	x	x	x	x			
Chicago Junction Ry	x	x	x	x	x	x	x	x			
Pittsburgh & Lake Erie RR Co	x	x	x	x		x	x	x	x	x	
Lake Erie & Eastern RR Co	x	x	x	x		x	x	x	x	x	
Cleveland Union Terminals Co	x	x	x	x	x	x	x	x	x	x	
Troy Union RR Co							x	x	x	x	
New York, Chicago & St. Louis RR Co	x	x	x	x	x	x	x	x	x	x	x
New York Dock Ry Co	x						x				
New York, New Haven & Hartford RR Co	x	x	x	x	x	x	x	x	x	x	x
New York, Susquehanna & Western RR Co	x	x	x	x	x	x	x	x	x	x	
Pennsylvania RR Co	x	x	x				x	x	x	x	x
Baltimore & Eastern RR Co								x	x	x	
Pennsylvania-Reading Seashore Lines	x		x	x	x	x	x	x	x	x	
Pittsburgh & West Virginia Ry Co	x	x	x	x	x	x	x	x	x	x	
Pittsburgh, Chartiers & Youghiogheny Ry Co							x	x			
Railroad Perishable Inspection Agency							x				
Reading Company	x	x	x	x	x	x	x	x	x	x	x
Philadelphia, Reading & Pottsville Telegraph Co				x					x		
River Terminal Ry Co				x			x				
Toledo Terminal RR Co	x	x	x	x	x		x	x	x		
Union RR Co (D)										x	
Union Depot Co (Columbus)						x			x		
Union Freight RR Co (Boston)							x	x			
Union Inland Freight Station							x				
Washington Terminal Co	x	x	x	x	x	x	x	x	x	x	
Youngstown & Northern RR Co (D)					x						

**NOTES:**

(A) - Ann Arbor

(B) - Ann Arbor

(C) - Baltimore & Ohio

- Includes Repairmen in the Marine Department at Elberta, Michigan.

- Includes Exclusive Purser.

- Includes Supervisors of Mechanics below the rank of General Foremen in the Mechanical Department, and employees of Cumberland Reclamation Plant (Rolling Mill), represented by System Federation No. 30, R. E. D.

NOTES: (continued)

(D) - Bessemer & Lake Erie  
Lake Terminal  
Monongahela Connecting  
Newburgh & South Shore  
Union  
Youngstown & Northern

The question of allocating 2 1/2¢ per hour (\$4.25 per month) to health and welfare benefits or to wages will be handled on the property if adjustment has not already been made.

(E) - NYC RR - Boston Division

**Includes Railroad Crossing Police.**

(F) - NYC RR - Western District

Includes Train Maids, Dormitory Car Porters, and Utility Men.

(G) - Central Railroad of New Jersey

Includes the New York & Long Branch and Wharton & Northern railroads.

**FOR THE CARRIERS:**

J. E. Jones

**FOR THE EMPLOYEES:**

L. E. Leighty

Chicago, Ill.  
November 7, 1956.

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RAILROADS	ORGANIZATIONS										
	Machinists	Boilermakers- Blacksmiths	Sheet Metal Workers	Electrical Workers	Carmen	Firemen and Oilers	Clerks	Maintenance of Way Employees	Telegraphers	Signalmen	Dining Car Employees
	1	2	3	4	5	6	7	8	9	10	11
Alton and Southern RR.	x	x	x		x	x	x	x		x	x
Atchison, Topeka and Santa Fe Ry., The	x	x	x	x	x	x	x	x	x	x	x
Gulf, Colorado and Santa Fe Ry.	x	x	x	x	x	x	x	x	x	x	x
Pennhandle and Santa Fe Ry.	x	x	x	x	x	x	x	x	x	x	
Belt Railway Company of Chicago, The	x	x	x	x	x	x	x	x	x	x	
Camas Prairie RR.	x	x	x	x	x	x	x	x	x	x	x
Chicago & Eastern Illinois RR.	x	x	x	x	x	x	x	x	x	x	
Chicago & Illinois Midland Ry.	x	x	x	x	x	x	x	x	x	x	x
Chicago and North Western Ry.	x	x	x	x	x	x	x	x	x	x	
Chicago and Western Indiana RR.	x	x	x	x	x	x	x	x	x	x	x
Chicago, Burlington & Quincy RR.	x	x	x	x	x	x	x	x	x	x	
Chicago Great Western Ry.	x	x	x	x	x	x	x	x	x	x	x
Chicago, Milwaukee, St. Paul and Pacific RR.	x	x	x	x	x	x	x	x	x	x	
Chicago Produce Terminal Co.	x	x	x	x	x	x	x	x	x	x	x
Chicago, Rock Island & Pacific RR.	x	x	x	x	x	x	x	x	x	x	x
Chicago, St. Paul, Minneapolis & Omaha Ry.	x	x	x	x	x	x	x	x	x	x	x
Colorado and Southern Ry., The	x	x	x		x	x	x	x			
Colorado and Wyoming Ry., The	x	x	x	x	x	x	x	x	x	x	x
Denver and Rio Grande Western RR., The					x						
Denver Joint Car Interchange & Inspection Bureau											
Denver Union Terminal Ry., The	x	x	x	x	x	x	x	x	x	x	
Des Moines Union Ry.	a-x	a-x	a-x	a-x	a-x	a-b-x	a-x	a-x	a-x		
Duluth, Missabe & Iron Range Ry.	x	x	x	x	x	x	x	x	x	x	
Duluth, South Shore and Atlantic RR.											
Duluth Union Depot & Transfer Co., The											

	1	2	3	4	5	6	7	8	9	10	11
Duluth, Winnipeg & Pacific Ry.	x	x	x	x	x	x	x	x	x	x	
Elgin, Joliet and Eastern Ry.	x	x	x	x	x	x	x	x	x	x	
El Paso Union Passenger Depot Co.							x				
Fort Worth and Denver Ry.	x	x	x	x	x	x	x	x	x	x	x
Joint Texas Div. of CRI&P RR. and FtW&D Ry.	x	x	x	x	x	x	x	x	x	x	x
Galveston, Houston and Henderson RR.	x	x	x		x	x	x	x	x	x	
Great Northern Ry.	c-x	c-x	c-x	c-x	c-x	c-x	c-x	x	x	x	x
Green Bay and Western RR.	x	x	x		x	x	x	x	x	x	
Kewaunee, Green Bay and Western RR.							x	x	x	x	
Houston Belt & Terminal Ry.	x	x	x	x	x		x	x	x	x	
Illinois Central RR.	x	x	d-x	e-x	x	f-x	g-x	x	x	x	h-x
Chicago and Illinois Western RR., The					x		x	x			
Illinois Northern Ry.	x	x	x		x		x	x	x		
Illinois Terminal RR.	x	x	x	x	x	x	x	x	x		
Kansas City Southern Ry., The	x	x	x	x	x	x	x	x	x	x	x
Arkansas Western Ry., The								x	x		
Fort Smith and Van Buren Ry.								x	x		
Kansas City, Shreveport and Gulf Term. Co., The							x				
Joplin Union Depot Co.	x	x	x	x	x	x	x		x		
Kansas City Terminal Ry.	x	x	x	x	x	x	x	x	x	x	
King Street Passenger Station (Seattle)								x			
Litchfield and Madison Ry.					x		x	x	x		
Los Angeles Junction Ry.	x						x				
Louisiana & Arkansas Ry.	x	x	x	x	x	x	x	x	x	x	
Manufacturers Ry.	x				x						
Midland Valley RR.	x	x	x	x	x	x	x	x	x		
Kansas, Oklahoma & Gulf Ry.					x	x	x	x	x		
Oklahoma City-Ada-Atoka Ry.								x	x		
Minneapolis & St. Louis Ry., The	x	x	x	x	x	x	x	x	x		
Railway Transfer Co., City of Minneapolis							x	x			
Minneapolis, St. Paul & Sault Ste. Marie RR.	x	x	x	x	x	x	x	x	x	x	x
Minnesota Transfer Ry.	x	x			x	x	x	x	x		
Missouri-Kansas-Texas RR.	x	x	x	x	x	x	x	x	x	x	x
Missouri-Kansas-Texas RR. Co. of Texas.	x	x	x	x	x	x	x	x	x	x	x
Beaver, Maude and Englewood RR.								x			

	1	2	3	4	5	6	7	8	9	10	11
Missouri Pacific RR.	x	x	x	x	x	x	x	x	x	x	x
Missouri-Illinois RR.	x	x	x	x	x	x	x	x	x	x	x
Northern Pacific Ry.	x	x	x	x	x	x	x	x	x	x	x
Northern Pacific Terminal Co. of Oregon	x	x	x	x	x	x	x	x	x	x	x
Northwestern Pacific RR.	x	x	x	x	x	x	x	x	x	x	x
Ogden Union Railway and Depot Co.			x	x	x	x	x	x	x	x	
Paducah and Illinois RR., The											
Peoria and Pekin Union Ry.	x	x	x	x	x	x	x	x	x	x	
Port Terminal Railroad Association	x	x			x	x	x	x			
Pueblo Joint Interchange Bureau, The					x		x				
St. Joseph Terminal RR.						x	x	x	x		
St. Louis-San Francisco Ry.	x	x	x	x	x	x	x	x	x	x	x
St. Louis, San Francisco and Texas Ry.	x	x	x	x	x	x	x	x	x	x	x
St. Louis Southwestern Ry.	x	x	x	x	x	x	x	x	x	x	x
Saint Paul Union Depot Co.	x	x	x	x		x	x	x	x		
San Diego & Arizona Eastern Ry.	x	x	x	x	x	x	x	x	x		
Sioux City Terminal Ry.	x	x		x	x		x	x			
Southern Pacific Co. (Pacific Lines)	x	x	x	x	x	x	x	x	x	x	x
Spokane, Portland and Seattle Ry.	x	x	x	x	x	x	x	x	x	x	x
Oregon Electric Ry.	x	x	x	x	x	x	x	x	x	x	x
Oregon Trunk Ry.											
Terminal Railroad Association of St. Louis	x	x	x	x	x		i-x	x	x	x	
Texarkana Union Station Trust							x				
Texas and New Orleans RR.	x	x	x	x	x	x	x	x	x	x	x
Texas and Pacific Ry., The					x		x	x			
Abilene & Southern Ry.					x		x	x			
Fort Worth Belt Ry.	x				x			x			
Texas-New Mexico Ry.								x			
Texas Short Line Ry.							x	x			
Weatherford, Mineral Wells & Northwestern Ry.											
Texas Mexican Ry., The	x	x	x	x	x	x	x	x	x	x	
TexPac-MoPac Terminal Railroad of New Orleans	x	x	x	x	x	x	x	x	x	x	
Toledo, Peoria & Western RR.	x	x	x	x	x	x	x	x	x	x	x
Union Pacific RR.	x	x	x	x	x	x	x	x			
Union Railway Co. (Memphis)	x	x	x	x	x	x	x	x			

	1	2	3	4	5	6	7	8	9	10	11
Union Terminal Co. (Dallas)	x	x		x	x	x	x	x	x	x	
Wabash RR.	x	x	x	x	x	x	x	x	x	x	x
Walla Walla Valley Transportation Co.							x	x			
Western Pacific RR., The	x	x	x	x	x	x	x	x	x	x	x
Western Weighing and Inspection Bureau							x				

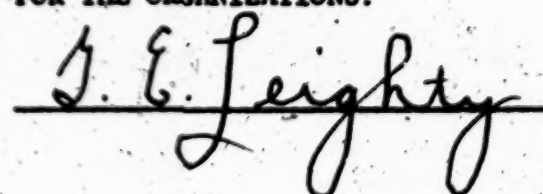
**NOTES: -**

- a - The question of allocating 2½¢ per hour (\$4.25 per month) to health and welfare benefits or to wages will be handled on the property if adjustment has not already been made.
- b - Authorization includes hostlers and assistant hostlers on Iron Range Division only.
- c - Authorization includes King Street Station.
- d - Authorization includes Section "A" and Section "B" Agreements.
- e - Authorization includes Section "A" and Section "B" Agreements, but does not include electrical workers, helpers and apprentices under Agreement dated July 11, 1939, applicable to the Illinois Central Hospital.
- f - Authorization includes watchmen, deckhands, firemen and shop laborers covered by Agreement dated July 1, 1939, applicable to Illinois Central Railroad employees on Steamer "Pelican" at Helena, Arkansas. Authorization does not apply to power plant employees and roundhouse and shop laborers covered by Agreement dated October 1, 1942, applicable to the Illinois Central Hospital.
- g - Authorization does not include clerical workers, machine operators, and station employees and laborers, covered by agreement effective January 1, 1955, applicable to the Illinois Central Hospital.
- h - Authorization includes chefs, cooks, waiters, waitresses, busboys, etc., covered by Agreement dated September 1, 1942, applicable to Illinois Central Station restaurant employees.
- i - Authorization includes red caps.

FOR THE CARRIERS:



FOR THE ORGANIZATIONS:



Chicago, November 1, 1956.

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## SOUTHEASTERN RAILROADS

which have authorized their representation

by

## SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEE - 1956

in the handling of proposals for

INCREASE OF 25¢ PER HOUR

submitted on behalf of certain employee groups (so-called "non-ops"),

on or about June 20, 1956

and for

## CERTAIN DECREASES IN EXISTING RATES OF PAY

submitted by such railroads to such employee groups

on or about June 29, 1956

such authorization, as to the respective classes of employees, being co-extensive with the provisions of current schedule agreements applicable to the employees represented by the organizations referred to above. Subject to the foregoing, the classes of employees covered by this authorization are indicated by ✓ in the appropriate columns below.

(Note: - This authorization is subject to the stipulation contained in Letter of Understanding dated November 1, 1956.)

RAILROADS	Clerks	M. of Rev.	Telegraphers	Signalmen	Mechanists	Boilermakers	Blacksmiths	Sheet Metal Workers	Electrical Workers	Carpenters	Teamsters, Oilers, Shop Laborers	D.C. Employees	Notes
Atlantic Coast Line	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Atlanta & West Point (a)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	(a)
Western Railway of Alabama (a)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Under agreement so providing, payments as mentioned in Article V will be made to the New York Life Insurance Company.
Atlanta Joint Terminal (a)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Augusta Union Station (a)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Birmingham Southern (b)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	(b)
Central of Georgia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	The question of allocating 2¢ per hour (\$4.25 per month) to health and welfare benefits or to wages will be handled on the property if adjustment has not already been made.
Charleston & Western Carolina	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Chesapeake & Ohio	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Clinchfield (a)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Florida East Coast (c)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	(c)
Georgia (a)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	In trust-ship. Any commitment subject to court approval.
Gulf, Mobile & Ohio	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Jacksonville Terminal	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Kentucky & Indiana Terminal	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Louisville & Nashville (a)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Nashville, Chattanooga & St. Louis (a)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Norfolk & Portsmouth Belt Line	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Norfolk & Western	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Richmond, Fredericksburg & Potomac	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Potomac Yard	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Richmond Terminal	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Seaboard Air Line	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Southern	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Alabama Great Southern	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Cincinnati, New Orleans & Texas Pacific	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Georgia Southern & Florida	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Harrison & Northeastern	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
New Orleans & Northeastern	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
New Orleans Terminal	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
St. Johns River Terminal	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Tennessee Central	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Virginia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	

For the Railroads

For the Employees

**Carrier's Exhibit "B".**

**Chicago, St. Paul, Minneapolis & Omaha Railway  
St. Paul Union Depot Co.  
Minnesota Transfer Railroad Co.  
System Division No. 4**

**The Order of Railroad Telegraphers**

**December 19, 1957.**

**Mr. T. M. Van Patten,  
Personnel Officer,  
Chgo, & Northwestern (CStPM&O) Railway,  
400 West Madison Street,  
Chicago 6, Illinois.**

**Dear Sir:**

Please accept this as a formal notice under the provisions of the Railway Labor Act, specifically Section 6, of the desire of the General Committee of The Order of Railroad Telegraphers on the Chicago and North Western (C. St. P. M. & O.) Railway Company to amend the current agreement by adding a rule reading:

**"No position in existence on December 3, 1957 will be abolished or discontinued except by agreement between the carrier and the Organization."**

Please advise place, time and date for initial conference.

Your attention is directed to the status quo provisions of the Railway Labor Act, Section 6.

**Yours truly,**

**/s/ Geo. J. Schueler,  
General Chairman, Chicago, St. Paul,  
Minneapolis & Omaha Railway.**

**Carrier's Exhibit "B-1".****The Order of Railroad Telegraphers****Chicago & North Western System****Division No. 76****December 23, 1957.**

**Mr. T. M. Van Patten,  
Director of Personnel,  
C. & N. W. Railway Co.,  
400 W. Madison Street,  
Chicago 6, Illinois.**

**Dear Sir:**

Please accept this as a formal notice served under the provisions of the Railway Labor Act, specifically Section 6, of the desire of the General Committee of The Order of Railroad Telegraphers on the Chicago and North Western Railway Company to amend the current agreement by adding a rule reading:

**"No position in existence on December 3, 1957 will be abolished or discontinued except by agreement between the carrier and the Organization."**

Please advise place, time, and date for initial conference.

Your attention is directed to the status quo provisions of the Railway Labor Act, Section 6.

**Yours respectfully,**

**/s/ R. B. Boyington,  
General Chairman.**

**RBB:HD**

**Carrier's Exhibit "C".**

**BEFORE SPECIAL BOARD OF ADJUSTMENT No. 215.**

**Nathan Cayton, Chairman**

**Award No. 1.**

**Case No. 1.**

**Parties to Dispute:**

**Brotherhood of Railway and Steamship Clerks, Freight  
Handlers, Express and Station Employees,  
and**

**Duluth, Missabe and Iron Range Railway Company,  
Duluth, South Shore and Atlantic Railroad Company,  
Great Northern Railway Company,  
Lake Superior and Ishpeming Railroad Company,  
Minneapolis, St. Paul and Sault Ste. Marie Railroad,  
Northern Pacific Railway Company.\***

The Committees of the Eastern, Western and Southeastern Carriers' Conference and the Employes' National Conference Committee met in Chicago, commencing November 19, 1957, and disposed of a number of disputes involving interpretations and applications of Article VI—Duration of Agreement of November 1, 1956, which disputes had been referred to them for determination.

The Committee jointly notified the National Mediation Board of their inability to agree with reference to two certain disputes (of which this is one) and that they would select the undersigned as Neutral Member and Referee. The National Mediation Board has officially certified the appointment of the undersigned in that capacity.

A hearing was conducted in Chicago, Illinois, on January

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\* Chicago and North Western Railway Company was originally a party to this dispute but both sides agree that that company is no longer a party and should be eliminated.

28, 1958 in the course of which it was stipulated that this dispute would be submitted for the sole decision of the undersigned and that such decision would be binding on all parties concerned. Statements of Committee representatives and counsel were received, and briefs have also been submitted.

The question for decision has been stated as follows:

"Is the notice served by the Organizations on the above-named carriers on or about March, 1957 for—

'A stabilized season of employment for all ore dock employees we represent under our ore dock agreement for a period of not less than eight (8) months consisting of not less than 1,386½ hours exclusive of overtime except holidays, in each calendar year.'

barred under Article VI of the November 1, 1956 Agreement?"

The applicable and relevant portions of the Article in question are as follows:

**"Article VI—Duration of Agreement.**

The purpose of this Agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraphs (d) and (e) of this Article, no carrier or organization, party to this Agreement, will serve any notice or progress any pending notice to—

(a) Increase or decrease rates of pay established by Articles I, II, III and IV of this Agreement.

(b) Increase or decrease the rate of compensation provided in existing agreements or understandings, or eliminate or establish agreements providing the rate of compensation, covering overtime payments, arbitrary payments, Sunday or holiday payments, time paid for but not worked, or increase or decrease the number of paid holiday or paid vacation days.

(e) This Article VI does not prevent the progressing of pending notices, the serving of notices and the negotiation of agreements dealing with stabilization of employment, separation allowances or other matters not prohibited by the foregoing provisions of this Article VI."

The question is whether the language just quoted acts as a bar to the demand of the ore dock workers for the "stabilized season of employment" above described.

The Carriers point to the expressed contractual purpose to fix the general level of compensation during the three-year period and to the language prohibiting either party from serving or progressing any notice which would increase or decrease rates of pay or the rate of compensation provided in the agreement covering time paid for but not worked. The Carriers contend that the purpose of the prohibitory language was to give assurance that Carrier's labor costs would, during the life of the contract, be stabilized against the possibility of increases in wages or changes in rules (but subject to cost of living increases).

The Carriers say that the employees' demand, if honored, would indisputably raise the general level of compensation for ore dock employees and would force the seven carriers involved to enter into agreements providing pay for time not worked, and that this is under the prohibition of the contractual moratorium.

For the employees it is contended that the proposal is one "dealing with stabilization of employment" which is reserved and excepted under Section (e) of Article VI, quoted above. Counsel for the Employees Conference Committee also argues that any question as to whether the proposal would result in time paid for but not worked goes to the merits of the proposal rather than to its "permissibility" as a subject of negotiations. They say the merits of the proposal are not before this Board and that it does not call for any payment for time not worked.

Both sides have built arguments bearing on supposedly conflicting provisions or phrases within Article VI and how such conflicts ought to be resolved. The Referee sees no need to choose between the diverse approaches taken by disputants to parts or the whole of Article VI; he thinks the ordinary and time-tested rules of contract construction provide a completely fair and satisfactory approach, and that for the purposes of this dispute, we can by reading the Article as a whole find the proper basis for decision.

The Article recites that the purpose of the Agreement is to fix the general level of compensation for the three years of its duration. It divests employes' organizations of the right to serve or progress any notice which would increase rates of pay or provide compensation in the form of time paid for but not worked. (It reserves, as we have seen, the right to serve notices dealing with stabilization of employment.)

Was this a reservation of a right to demand a guaranteed or assured minimum period of employment within a season or other period during a given year? The Referee thinks not. One need not have vast experience in order to be aware of the vagaries of climate and commerce and the effect they have on the rise and fall of activity in the ore dock business. If ore dock workers wish to contend for the right to an assured minimal employment of eight months a year, or (as stated) 1,386½ hours, then it is reasonable to suggest that such should be sought by contract negotiations at the expiration of the existing three-year agreement. Parenthetically, it may be noted that if this group of employees has the right to progress such a demand, then there would seem to be no sound reason to deny the same right to other groups in the industry. The Referee is aware that the Notice speaks of a "stabilized season of employment" but what has already been said indicates that adoption of such phraseology does not bring this case within Article VI(e).

It seems clear that the proposal here made in behalf of ore dock workers would increase their rates of pay (fixed in preceding Articles of the Agreement) by, in effect, providing for their compensation on a seasonal rather than an hourly or weekly basis, and without regard to the needs of the industry or the amount or volume of its business. This is not stabilization of employment in any reasonable or fair sense.

The proposal is not aimed to preserve a status quo with respect to employment, but rather to guarantee a certain amount of work each year, with the inevitable result of placing upon the Carriers a potential liability for payment for time not worked,—a liability it would not have in the absence of such a guarantee.

It follows that the proposal would supersede the existing agreement and increase the rate of compensation governing "time paid for but not worked" and that this would be violative of the November 1, 1956 Agreement.

As we have seen, employees' counsel argues that the "proposal does not in terms call for any payment for time not worked." But we may assume that the employees are not seeking a mere "paper" victory and that if "permissibility" is established, they would (as would be their right) presumably lose little time in translating it into a negotiated financial advantage in the form of pay for a fixed number of hours per season, whether work is available for them or not. This the language of the contract does not permit. The Notice served March 1, 1957 must be held barred.

/s/ Nathan Cayton,  
*Chairman and Neutral Referee,  
Special Board of Adjustment  
No. 215.*

Washington, D. C.

March 4, 1958.

**Carrier's Exhibit "D".**

**Before Special Board of Adjustment No. 215.**

**Nathan Cayton, Chairman.**

**Award No. 2.**

**Case No. 10.**

**Parties to Dispute:**

**Brotherhood of Railway and Steamship Clerks, Freight  
Handlers, Express and Station Employes,  
and  
Erie Railroad.**

The Carriers' Conference Committees and Employes' National Conference Committee met in Chicago commencing November 19, 1957, and disposed of a number of disputes involving interpretation and applicability of Article VI—Duration of Agreement. The Committees agreed that two cases would be deadlocked and referred to a neutral referee for final and binding decision. The parties agreed upon the undersigned as the Neutral Referee to decide these cases, and this designation has been confirmed by the National Mediation Board.

A hearing was held in Chicago on January 28, 1958, at which certain documents and arguments were presented; and later a brief for the employes was submitted February 8, 1958.

The question presented for decision is whether progression of a notice to amend a rule served by the Brotherhood is barred by the Agreement of November 1, 1956. The rule sought to be amended is Rule 20-2(d) which reads:

**"(d) Seven Day Positions—**

**On positions which have been filled seven (7) days per**

week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday."

The Brotherhood proposes that the Rule be amended to include the following language:

"The seven (7) day position referred to herein are those positions which, on August 31, 1949, were assigned and filled seven (7) days per week."

The portions of the November 1, 1956 Agreement which are here applicable are as follows:

**"Article VI—Duration of Agreement**

The purpose of this Agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraphs (d) and (e) of this Article, no carrier or organization, party to this Agreement, will serve any notice or progress any pending notice to—

(a) Increase or decrease rates of pay established by Articles I, II, III and IV of this Agreement.

(b) Increase or decrease the rate of compensation provided in existing agreements or understandings, or eliminate or establish agreements providing the rate of compensation covering overtime payments, arbitrary payments, Sunday or holiday payments, time paid for but not worked, or increase or decrease the number of paid holiday or paid vacation days.

(e) This Article VI does not prevent the progressing of pending notices, the serving of notices and the negotiation of agreements dealing with stabilization of employment separation allowances or other matters not prohibited by the foregoing provisions of this Article VI."

The Brotherhood denies that the proposed rule would in any way modify the rules of the current Agreement per-

taining to the rate of compensation applicable to Sunday service, overtime service or rest day service. The Brotherhood also contends that even if the adoption of the proposed rule would have the effect of making Sunday the rest day on certain positions to which other rest days are now assigned and thus bring Sunday service on these positions under the application of existing rules governing application for service on rest days, the proposal would still not be barred by Article VI of the Agreement. Another contention of the Brotherhood is that the amendment would merely "implement" the 40-hour week agreement and help determine which are rest days.

For the Carrier, it is contended that the matter is covered by Article VI of the current Agreement and that the Brotherhood's proposal would require overtime payments for Sunday work in violation of that agreement. The Carrier has also taken the position that the proposed amendment, if adopted, would apply in any situation where the Carrier has seven-day operations where positions were not assigned and filled seven days a week on August 31, 1949.

By Contract dated March 19, 1949, a 40 hour week was established, effective September 1, 1949. In an explanatory "Note" preceding the effectuating language, the following is said:

"The expressions 'positions' and 'work' used in this Article II refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees."

The provision dealing with our subject reads:

"(d)—Seven day positions—

On positions which have been filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday."

It will be seen that the language just quoted is identical with Rule 20-2(d) which is here sought to be amended.

The Carrier has referred us to a considerable background of disputes, interpretations and decisions dealing with this general subject. In the brief submitted in behalf of the Brotherhood, we are given other background references in support of the employees' position. But counsel for the Brotherhood says in his brief: "We do not believe that any of this history of controversy has any relevance to the determination of the dispute before this Board."

With this last statement the Referee finds himself in agreement. In the first place, he thinks it is not the function of this Board to construe the 1949 agreement. A construction most favorable to the employees would require the Carrier to establish no more seven-day positions than had been actually established and worked prior to September 1, 1949. I think it cannot be said for the purposes of this decision that such is the only proper or reasonable construction.

Nor are we put to the necessity of reconciling or choosing between conflicting decisions or arbitration or adjustment boards which, on one hand, have afforded carriers a certain degree of flexibility in establishing seven-day positions (with Saturday and Sunday as straight time or pro-rata days) and those which, on the other hand, have imposed restrictions on carriers in establishing such positions.

We are to deal with the situation before us in the light of the contract and the practical effect of the proposed amendment. The amendment would require a freezing of seven-day positions as they existed on August 31, 1949, with no right by Carrier to establish the number of such positions with relation to the number of existence a reasonable time before that pivotal date. Thus the adoption of the proposal would result in imposing even heavier restrictions with respect to assigning days other than Sun-

days as rest days than would be imposed by the most restrictive interpretations of the 40-hour week Agreement in the Arbitrator or Board decisions cited by the parties. The inevitable result would be to require premium pay for Sunday as such, or to increase overtime payment for Sunday by establishing it as a day of rest in situations where it was not so established or regarded in the past. This would be violative of Article VI of the current Agreement in that it would override present contractual standards of compensation and increase rates of pay for Sunday work.

The progression of the Notice served by the organization of July 2, 1956 is barred.

/s/ Nathan Cayton

Nathan Cayton,

*Chairman and Neutral Referee  
Special Board of Adjustment  
No. 215.*

Washington, D. C.

March 4, 1958.

### Carrier's Exhibit "E".

C&NW Positions Coming Under Scope of Agreement with ORT  
Abolished Since December 3, 1957.

Location	Date of Abolishment	Position	Authority
		By Reason of Line Abandonment.	
Deep River, Ia.	7-15-58	Agent	Interstate Commerce Commission Order 19691, dated 6-4-58
Hartwick, Ia.	"	"	"
What Cheer, Ia.	"	"	"

By Reason of Consolidation with Other Railroads.

Eldora, Ia.	4-15-58	"	Iowa State Commerce Commission Order A-5692 11-4-57, consolidated with M&STL. ORT agreement secured 4-10-58.
Laverne, Ia.	"	"	Iowa State Commerce Commission Order A-5693 11-4-57, consolidated with M&STL. ORT agreement secured 4-10-53.

Location	Date of Abolishment	Position	Authority
Lake Mills, Ia.	"	"	Iowa State Commerce Commission Order A-5695 3-10-58, consolidated with M&STL. ORT agreement secured 4-10-58.

By Reason of Actual Closing.

Cottonwood, S. D.	5-14-58	"	Public Utilities Commission of South Dakota Order F-2499 5-9-58.
Lisbon, Ia.	3-15-58	"	Iowa State Commerce Commission Order A-5677, dated 12-18-57.
St. Peter, Minn. (Dakota Division)	1-31-58	"	Minnesota Railroad & Warehouse Commission Order A-7541 11-4-57. Twin Cities Division station still open at St. Peter.
Whitney, Neb.	4-11-58	"	Nebraska State Railway Commission Order No. 19240.

By Reason of Central Agency Program.

Location	Date	Agent	Authority
Athol, S. D.	5-14-58	Agent	Public Utilities Commission of the State of South Dakota Order F-2499, 5-9-58.
Mansfield, S. D.	"	"	"
Columbia, S. D.	"	"	"
Houghton, S. D.	"	"	"
Astoria, S. D.	"	"	"
Gary, S. D.	"	"	"
Elkton, S. D.	"	"	"
Castlewood, S. D.	"	"	"
Bruce, S. D.	"	"	"
Volga, S. D.	"	"	"
Turton, S. D.	"	"	"
Conde, S. D.	"	"	"
Ferney, S. D.	"	"	"
Agar, S. D.	"	"	"
Seneca, S. D.	"	"	"
Lebanon, S. D.	"	"	"
Miranda, S. D.	"	"	"
Rockham, S. D.	"	"	"
Zell, S. D.	"	"	"
Frankfort, S. D.	"	"	"
Raymond, S. D.	"	"	"
Henry, S. D.	"	"	"
Hitchcock, S. D.	"	"	"
Wessington, S. D.	"	"	"
St. Lawrence, S. D.	"	"	"
Ree Heights, S. D.	"	"	"
Harrold, S. D.	"	"	"
Carthage, S. D.	"	"	"
Lake Preston, S. D.	"	"	"
Canistota, S. D.	"	"	"
Canova, S. D.	"	"	"

Location	Date of Abolishment	Position	Authority
Monroe, S. D.	"	"	"
Hurley, S. D.	"	"	"
Alcester, S. D.	"	"	"
Wakonda, S. D.	"	"	"
Montrose, S. D.	"	"	"
Hartford, S. D.	"	"	"
Valley Springs, S. D.	"	"	"
Farmer, S. D.	"	"	"
Fulton, S. D.	"	"	"
Oelrichs, S. D.	"	"	"
Buffalo Gap, S. D.	"	"	"
Whitewood, S. D.	"	"	"
Nisland, S. D.	"	"	"
Underwood, S. D.	"	"	"
Quinn, S. D.	"	"	"
Fort Pierre, S. D.	"	"	"
Fairfax, S. D.	"	"	"
Herrick, S. D.	"	"	"
Dallas, S. D.	"	"	"
Colome, S. D.	"	"	"
Wood, S. D.	"	"	"
Low Moor, Ia.	8-13-58	"	Order Iowa Commerce Commission Docket A-5726, 8-11-58.
Grand Mound, Ia.	"	"	"
Wheatland, Ia.	"	"	"
Clarence, Ia.	"	"	"
Stanwood, Ia.	"	"	"
Mechanicsville, Ia.	"	"	"
Norway, Ia.	"	"	"
Toledo, Ia.	"	"	"
Montour, Ia.	"	"	"
Clutier, Ia.	"	"	"
Buckingham, Ia.	"	"	"
Stout, Ia.	"	"	"
Dougherty, Ia.	"	"	"
Dumont, Ia.	"	"	"
Jolce, Ia.	"	"	"
Scarville, Ia.	"	"	"
Chelsea, Ia.	"	"	"
Colo, Ia.	"	"	"
Randall, Ia.	"	"	"
Sheldahl, Ia.	"	"	"
Whitten, Ia.	"	"	"
Beaman, Ia.	"	"	"
Garwin, Ia.	"	"	"
Lawn Hill, Ia.	"	"	"
Ellsworth, Ia.	"	"	"
Hubbard, Ia.	"	"	"
Harcourt, Ia.	"	"	"
Farnhamville, Ia.	"	"	"
Auburn, Ia.	"	"	"
Dayton, Ia.	"	"	"
Stanhope, Ia.	"	"	"
Breda, Ia.	"	"	"
Woolstock, Ia.	"	"	"
Thor, Ia.	"	"	"
Rutland, Ia.	"	"	"
Goldfield, Ia.	"	"	"

Location	Date of Abolishment	Position	Authority
Irvington, Ia.	"	"	"
Fairfax, Ia.	"	"	"
Ledyard, Ia.	"	"	"
Lone Rock, Ia.	"	"	"
Dolliver, Ia.	"	"	"
Bradgate, Ia.	"	"	"
Linn Grove, Ia.	"	"	"
Peterson, Ia.	"	"	"
Maurice, Ia.	"	"	"
Granville, Ia.	"	"	"
Sutherland, Ia.	"	"	"
Ireton, Ia.	"	"	"
Craig, Ia.	"	"	"
Salix, Ia.	"	"	"
Beaver, Ia.	"	"	"
Scranton, Ia.	"	"	"
West Side, Ia.	"	"	"
Vail, Ia.	"	"	"
Woodbine, Ia.	"	"	"
Irwin, Ia.	"	"	"
Manning, Ia.	"	"	"
Arthur, Ia.	"	"	"
Battle Creek, Ia.	"	"	"
Castana, Ia.	"	"	"
Danbury, Ia.	"	"	"
Lake View, Ia.	"	"	"
Galva, Ia.	"	"	"
Quashing, Ia.	"	"	"
Moville, Ia.	"	"	"
Pierson, Ia.	"	"	"
Modale, Ia.	"	"	"
River Sioux, Ia.	"	"	"
Ashton, Ia.	"	"	"
Hospers, Ia.	"	"	"

Location	Date of Abolishment	Position
Oakes, North Dakota	4- 1-58	Tel-Clk
Butterfield, Minn.	6-30-58	Tel-Clk
Boone, Iowa	2-17-58	Train Dispatcher
Hermansville, Mich.	5-19-58	Telegrapher
Kaukauna, Wis.	2-28-58	Tel-Clk
Hermansville, Mich.	4- 1-58	Tel-Clk
O'Neill, Neb.	7-10-58	Tel-Clk
Spooner, Wis.	5-27-58	Tel-Clk
Bloomer, Wis.	4- 5-58	Telegrapher
St. James, Minn.	3-11-58	Train Dispatcher
St. Paul, Minn.	1-16-58	Agent
West Bend, Wis.	1-16-58	Tel-Clk
Sangamon St. Tower (Chgo.)	4-11-58	Tel-Lev.
Sangamon St. Tower (Chgo.)	4-11-58	Tel-Lev.

# *Plaintiff's Exhibit No. 11.*

## **C&NW Positions Coming Under Scope of Agreements with ORT**

**Established Since December 3, 1957.**

7- 1-58	12-31-58	Long Pine, Neb.	2nd Tel.-Clk.	006-082
2-15-58	P	Chadron, Neb.	3rd Tel.-Clk.	015-082
12-15-57	P	Gordon, Neb.	Agt. Tel.	001-080
12-15-57	P	Chadron, Neb.	2nd Tel.-Clk.	014-082
4- 1-58	P	Oakes, N. Dak.	Agt. Tel.	002-080
5- 5-58	P	Tracy, Minn.	Tel. Clk.	004-082
		Hawarden, Ia.	Tel. Clk.	003-082
3-20-58	P.	So. Elgin, Ill.	Tel. Agt.	001-080
4-16-58	P	Speer, Ill.	Stud. Tel.	002-083
3-17-58	P	Barr, Ill.	Stud. Tel.	004-083
6-30-58	P	Cedar Rapids, Ia.	Tel. Lev. Clk.	011-082
			Tel. Lev. Clk.	011-082
6- 1-58	P	Boone, Ia.	Asst. Ch. Tr. Disp.	017-075
4-17-58	P	Belle Plaine, Ia.	Tel.-Clk.	012-083
2-10-58	P	Des Moines, Ia.	Tel.-Clk.	015-082
5- 1-58 to 10-31-58		Conover, Wis.	Agt. Tel.	001-080
5-15-58	12-31-58	Siemens, Mich.	1st Tel.-Clk.	001-083
		Siemens, Mich.	2nd Tel.-Clk.	002-083
5-15-58 to 12-31-58		Ashland Ore Dock	Tel. Clk.	010-083
4- 1-58 to 12-15-58		Tesch, Mich.	Tel. Lev.	002-083
		Escanaba, Mich.	Tel. Clk.	005-082
		Stambaugh, Mich.	Tel. Clk.	003-082
		Powers, Mich.	Tel. Clk.	003-082
		Stager, Mich.	Tel. Clk.	004-082
2-11-58 to P		Escanaba, Mich.	Tel. Clk.	003-082
2-11-58 to P		Green Bay, Wis.	Asst. Ch. Tr. Disp.	002-075
			Tel.-Clk.	016-082
1-15-58—P		Norfolk, Neb.	3rd Tel. Clk.	011-082
6- 1-58—P		East Yard, Minn.	IDP-Opr. Yd. Clk.	105-007
			IDP-Opr. Yd. Clk.	110-007
5-15-58—P		Eau Claire, Wis.	1st Tel. Clk. Lev.	001-083
			2nd Tel. Clk. Lev.	002-083
			3rd Tel. Clk. Lev.	003-083
11-16-57—P		Heron Lake, Minn.	Stud. Tel.	002-083
11-16-57 P		Shakopee, Minn.	Stud. Tel.	003-083
11- 1-57 P		Clear Lake, Minn.	Stud. Tel.	002-083
		Fall Creek, Wis.	Stud. Tel.	002-083
7-16-58—P		Elroy, Wis.	Tel. Clk.	002-082
3- 1-58—P		Adams, Wis.	Tel. Clk.	005-082
4-10-58—P		Kedzie Ave. Tower	Director-Leverman	004-083

**PLAINTIFF'S EXHIBIT NO. 12.**

**National Railroad Adjustment Board.**

**Third Division.**

**220 South State Street.**

**August 22, 1958.**

**Mr. G. E. Leighty, President  
The Order of Railroad Telegraphers  
3860 Lindell Blvd.,  
St. Louis 8, Mo.**

**Dear Sir:**

Written notice of intention to file *ex parte* submission within thirty days of August 22, 1958, has been received from Mr. T. M. Van Patten, Director of personnel, Chicago and North Western Railway Company, in dispute involving, briefly and for identification purposes only, the following:

That the notices served by the Order of Railroad Telegraphers on the carrier, dated December 19, 1957 and December 23, 1957 are in contravention of Article VI of the Agreement of November 1, 1956.

Mr. Van Patten's notice indicates copy thereof was sent to you. You are, therefore, respectfully requested to file with the Third Division of the Adjustment Board within the same period of time, or by September 22, 1958, fifteen copies of your submission prepared in accordance with requirements contained in Circular No. 1 issued October 10, 1934, and Motion adopted by the Division on November 26, 1957.

Copy of motion adopted November 26, 1957, if not previously furnished you, is enclosed for your ready reference.

Kindly acknowledge receipt.


Yours very truly,

National Railroad Adjustment Board,  
Third Division,

A. Ivan Tummon,

*Executive Secretary.*

cc—Mr. T. M. Van Patten,  
Mr. R. C. Williamson,  
Mr. G. J. Schueler.



**PLAINTIFF'S EXHIBIT NO. 13.**

**Memorandum Agreement Between Chicago and North Western Railway Company and Certain Non-Operating Labor Organizations.**

**Supplemental Unemployment Benefits.**

**Signed at Chicago, Illinois**

**December 27, 1956**

**Memorandum Agreement Made This Twenty-Seventh Day of December, 1956 by and Between the Chicago and North Western Railway Company and the Chicago, Saint Paul, Minneapolis and Omaha Railway Company and the Following Labor Organizations: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; International Association of Machinists; International Brotherhood of Boiler-makers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; Brotherhood Railway Carmen of America; Sheet Metal Workers International Association; International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers; Brotherhood of Maintenance of Way Employees; Joint Council of Dining Car Employees Union, Local 351, Hotel and Restaurant Employees and Bartenders International Union; United Transport Service Employees; American Railway Supervisors Association; Railroad Yardmasters of America.**

**It is hereby agreed that supplemental unemployment benefits will be paid as follows:**

**1.(a) Except as provided in paragraph 1(b) hereof, employees who are separated from their employment on or subsequent to May 8, 1956 and who qualify for and receive**

unemployment benefits under provisions of the Railroad Unemployment Insurance Act, as amended, with in addition to such unemployment benefits, so long as eligible for and actually receiving such benefits, be considered qualified for and receive from the railway company supplemental unemployment benefits as follows:

(1) If the daily benefit rate in column 2 of Subsection (a) of Section 2 and the paragraph immediately following the table, of the Railroad Unemployment Insurance Act, as amended August 31, 1954, or as may be subsequently amended, with respect to any employee is less than an amount equal to 60 per centum of the daily rate of compensation for the employee's last employment in which he engaged for the Chicago and North Western Railway System in the base year, such daily benefit rate shall be increased to such amount but not to exceed a total daily benefit rate under the Act and hereunder of \$10.20. The daily rate of compensation referred to in this paragraph shall be as determined by the railway company from the payroll records or in the event a dispute arises, by agreement between the Director of Personnel for the railway company and the General Chairman of the organization involved.

(2) An employee who has fifteen (15) or more years' continuous service with the railway company and who qualifies for supplemental unemployment benefits hereunder and receives compensation during a benefit year under the Railroad Unemployment Insurance Act to the extent of the full benefits available under such Act and continues unemployed until a new benefit year starts under the Act in which he had sufficient earnings in the base year to qualify for payment in the benefit year, will be paid by the railway company for one (1) such interim period 60 per centum of the daily rate of compensation for the employee's last employment, with a maximum of \$10.20 per day, but in any event not exceeding the amount payable per day had the employee qualified under paragraph 1(a)(1) hereof. Employees who accept benefits under

this paragraph but who are not eligible to receive benefits under the Railroad Unemployment Insurance Act because of being employed or otherwise disqualified under that Act, will forfeit their seniority with the railroad company and may be subject to such other action as the railroad company desires to take, provided that this provision shall not apply if the sole reason for such ineligibility to receive benefits under the Railroad Unemployment Insurance Act is that such employees have exhausted their full benefits in the benefit year. Payment to any individual employee under this paragraph (2) shall not in any event be for in excess of six (6) months during the three (3) year interim period herein contemplated.

1. (b) In addition to the disqualifying conditions provided for in the Railroad Unemployment Insurance Act, employees in the following categories will not be considered as covered by paragraph (a) above:

1. Those employees who are paid Railroad Retirement physical disability annuity or those employees who have attained age eligible to receive Railroad Retirement age annuity.

2. Those employees whose continuous service with the railway company is less than two (2) years at the time of termination of employment.

3. Employees who absent themselves from service account strike; and employees who are laid off as a result of emergency conditions such as flood, snow storm, hurricane, earthquake, fire, or strikes on these or other railroads or in other industries, provided the carrier's operations are suspended in whole or in part as a result thereof.

4. Those employees who voluntarily resign from the service rather than accept or continue employment on basis of their seniority for which they were qualified and which was available to them.

5. Those employees dismissed or suspended from the service for cause, including union shop citations.

6. Those employees who are on leave of absence

rather than accept or continue employment on basis of their seniority in their seniority district for which they are qualified and which is available to them.

7. Those employees who take a furlough status rather than accept full time employment on a comparable position in their regular craft or class for which they are qualified regardless of department or location where the railway company offers: (1) to assume cost of movement of employee and family and household effects to new location; and (2) that if such employee is furloughed within six (6) months after changing his point of employment and elects to move his residence back to his last point of employment, to assume cost of movement of employee and family and household effects to last point of employment.

8. Those employees occupying positions at the time of termination of employment who do not hold seniority in any seniority district.

9. Seasonal track forces laid off between October 1 of each year and April 1 of the following year as result of change from summer track maintenance force to winter track maintenance force. Any reduction in track forces below the average number employed at each location during the months of October 1955 to March 1956, both inclusive, will be considered other than a seasonal reduction.

10. Those employees receiving or eligible to receive separation or coordination allowance under the Washington Job Protection Agreement, other similar agreements, or Interstate Commerce Commission Order.

2. In the application of this memorandum agreement it is understood and agreed that the supplemental unemployment benefits provided for herein over and above those provided for in the Railroad Unemployment Insurance Act will not in any event be payable for days or for a greater number of days during a benefit year than are payable under the Act, except as provided in paragraph 1(a) (2) hereof. In no event will the total amount of benefits

provided for in the Act and hereunder paid to an employe for days of unemployment during a benefit year exceed the employe's compensation received from the Chicago and North Western Railway System in the base year.

3. ~~Except as~~ provided herein all other provisions of the Railroad Unemployment Insurance Act, as amended, are applicable to the supplemental benefits here provided.

4. Nothing contained herein will be construed as supplementing any sick benefits paid to employes under the Act regardless of whether such employe is or is not qualified to receive unemployment compensation under the Act.

5. It is contemplated by the parties hereto that, within a period of three (3) years from May 8, 1956, the Railroad Unemployment Insurance Act will or may be revised or amended in such a way as to increase the benefits now provided for therein. The supplemental benefits outlined in this agreement are to be automatically reduced by the amount of any increase under the Act, and are limited to the three (3) year interim period herein contemplated.

6. It is understood and agreed that this memorandum agreement is in full and final settlement of the dispute growing out of notices served by the labor organizations parties hereto, on the carriers, covering formal request for agreements providing for severance pay, furlough allowances, separation allowances, displacement allowances, etc., such notices being dated as follows:

# Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

May 8, 1956

(Federated Crafts)

C&NW

CSTPM&O

International Association of Machinists )

International Brotherhood of Boiler- )  
makers, Iron Shipbuilders, Blacksmiths, )  
Forgers and Helpers )

International Brotherhood of Electrical )  
Workers )

Brotherhood Railway Carmen of )  
America )

July 6, 1956

July 6, 1956

Sheet Metal Workers International )  
Association )

International Brotherhood of Firemen, )  
 Oilers, Helpers, Roundhouse and Rail- )  
way Shop Laborers )

Brotherhood of Maintenance of Way )  
Employees )

Aug. 17, 1956

Aug. 28, 1956

Joint Council of Dining Car Employees )  
Union, Local 351, Hotel and Restaurant )  
Employees International Alliance and )  
 Bartenders' International League of )  
 America, American Federation of Labor )

May 16, 1956

American Railway Supervisors Associa- )  
tion )

May 15, 1956

May 19, 1956

Railroad Yardmasters of America )

May 29, 1956

United Transport Service Employees of )  
America )

May 10, 1956

The purpose of this agreement is to alleviate undue hardship for the interim period, or until the Railroad Unemployment Insurance Act is revised or amended within that period. Therefore this agreement is not subject to change or modification during such three (3) year period, nor shall any labor organization or organization parties hereto during such period serve or process any notice covering changes in this agreement or dealing with stabilization of employment, separation allowance or other similar requests or demands, unless such requests or demands are

served by one or more of the organizations parties hereto on the railroads generally as a part of a national or western regional movement, in which event any national or western regional agreement reached may at the election of the organization or organizations parties hereto be substituted in its entirety for the protection hereby established in paragraphs 1(a)(1) and 1 (a)(2) hereof, Provided however that notwithstanding any such substitution the three year moratorium hereby established shall continue except as to other national or regional movements dealing with stabilization of employment, separation allowance or other similar requests or demands.

For The Chicago and North Western  
Railway Company and Chicago,  
Saint Paul, Minneapolis and Omaha  
Railway Company:

T. M. Van Patten,

*Director of Personnel,*

For the Labor Organizations, Chicago  
and North Western Railway:  
Brotherhood of Railway and Steam-  
ship Clerks, Freight Handlers, Ex-  
press and Station Employees:

C. L. Dennis,

*General Chairman,*

International Association of  
Machinists:

Arthur D. Walsh,

*General Chairman,*

International Brotherhood of Boiler-  
makers, Iron Shipbuilders, Black-  
smiths, Forgers and Helpers:

A. L. Kohn,

*General Chairman,*

**International Brotherhood of Electrical Workers:**

**C. H. Foster,**  
*General Chairman,*

**Brotherhood Railway Carmen of America:**

**Jack Cohan,**  
*General Chairman,*

**Sheet Metal Workers International Association:**

**R. L. Steingraber,**  
*General Chairman,*

**International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers:**

**Thos. Powell,**  
*General Chairman,*

**Brotherhood of Maintenance of Way Employees:**

**J. F. Schultz,**  
*General Chairman,*

**Joint Council of Dining Car Employees Union, Local 351, Hotel and Restaurant Employees International Alliance and Bartenders' International League of America, American Federation of Labor:**

**W. S. Seltzer,**  
*General Chairman,*

**United Transport Service Employees of America:**

**T. Wilbur Winchester,**  
*General Chairman,*

American Railway Supervisors'  
Association:

E. R. Dean,  
*General Chairman,*

Railroad Yardmasters of America:

L. J. Steft,  
*General Chairman,*

For the Labor Organizations, Chicago,  
Saint Paul, Minneapolis and  
Omaha Railway:

Brotherhood of Railway and Steam-  
ship Clerks, Freight Handlers, Ex-  
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smiths, Forgers and Helpers:

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*General Chairman,*

International Brotherhood of Elec-  
trical Workers:

C. H. Foote,  
*General Chairman,*

Brotherhood Railway Carmen of  
America:

Jack Cohan,  
*General Chairman,*

Sheet Metal Workers International  
Association: . . .

R. L. Steingraber,  
*General Chairman,*

**International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers:**

**Theo. Powell,**

*General Chairman,*

**Brotherhood of Maintenance of Way Employees:**

**Ernest L. Lee,**

*General Chairman,*

**American Railway Supervisors' Association:**

**Wm. L. Landergare,**

*General Chairman,*

**Railroad Yardmasters of America,**

**L. J. Steft,**

*General Chairman,*

**International Association of Machinists:**

**Waldo C. MacMillen,**

*General Chairman.*

**Chicago, Illinois.**

**PLAINTIFF'S EXHIBIT NO. 14.**

**National Railroad Adjustment Board.**

**Third Division**

**220 South State Street,**

**Chicago 4, Illinois.**

**August 25, 1958.**

**Mr. T. M. Van Patten, Director of Personnel,  
Chicago and North Western Railway Company,  
400 West Madison Street,  
Chicago 6, Illinois.**

**Dear Sir:**

This is to certify that by letter dated July 30, 1958 the Minneapolis & St. Louis Railway Company filed with the Third Division, National Railroad Adjustment Board, fifteen copies of Carrier's ex parte submission involving dispute as to whether the notice of the Order of Railroad Telegraphers, dated January 25, 1958, requesting an amendment to the current agreement as follows:

**"No position in existence on December 3, 1957 will be abolished or discontinued except by agreement between the carrier and the Organization."**

is barred by the moratorium provisions contained in Article VI of the National Agreement of November 1, 1956.

This case has not yet been docketed by the Third Division, National Railroad Adjustment Board and has not yet been assigned any docket number by the Board.

**Yours very truly,**

**A. Ivan Tummon,**

***Executive Secretary—Third Division.***

**PLAINTIFF'S EXHIBIT NO. 15.**

**Third Division,  
220 South State Street,  
Chicago 4, Illinois.**

**August 26, 1958.**

**Mr. T. M. Van Patten,  
Director of Personnel,  
Chicago and North Western Railway Company,  
400 West Madison Street,  
Chicago 6, Illinois.**

**Dear Sir:**

**This is to certify that by letter dated August 22, 1958 the Chicago and North Western Railway Company filed with the Third Division, National Railroad Adjustment Board, fifteen (15) copies of Carrier's ex parte submission involving dispute—**

**That the notices served by the Order of Railroad Telegraphers on the carrier, dated December 19, 1957 and December 23, 1957 are in contravention of Article VI of the Agreement of November 1, 1956.**

**Yours very truly,**

**A. Ivan Tummon,  
Executive Secretary,  
Third Division.**

**PLAINTIFF'S EXHIBIT NO. 16.**

**July 18, 1958.**

**Mr. Frank J. Goebel, Chairman,  
Eastern Carriers Conference Committee,  
Signatory to Agreement of November 1, 1956,**

**Mr. T. Short, Chairman,  
Western Carriers Conference Committee,  
Signatory to Agreement of November 1, 1956,**

**Mr. C. A. McRee, Chairman,  
Southeastern Carriers Conference Committee,  
Signatory to Agreement of November 1, 1956,  
Room 474 Union Station Building,  
Chicago 6, Illinois.**

**Dear Sirs:**

This is in reply to the letter you handed us during our meeting at the Statler Hotel, Washington, D. C., July 17, 1958, to which you attached decisions proposed by your Committees for joint adoption by them and the Employees' National Conference Committee with respect to three cases dealing with stabilization of employment in which disagreements had arisen between carriers signatory to the November 1, 1956 Agreement and organizations signatory to that Agreement as to the applicability of Article VI of that Agreement to notices served by those organizations under Section 6 of the Railway Labor Act.

There is much in your letter to which we cannot subscribe because of inaccuracies both of fact and of implication.

The oral agreement to which you refer for the handling by the Carriers' Conference Committees and the Employees' National Conference Committee of disputes concerning the application of Article VI of the November 1, 1956

Agreement is not precisely as you describe it and I shall therefore restate it in the context in which it was made. Preceding the Agreement of November 1, 1956, there had been intensive and extensive negotiations and discussions between the Carriers' Conference Committees and the Employes' National Conference Committee, particularly between our respective subcommittees, which eventuated in the Agreement. The preponderance of this discussion and negotiation was with respect to the subject matter that finally gave rise to Article VI of the Agreement. It was then our mutual conviction that all possible applications of Article VI had been so thoroughly discussed among us and that we so completely understood each other as to its meaning and application that it seemed unlikely that any disagreement could arise between the Carriers' Conference Committees and the Employes' National Conference Committee concerning its applicability or nonapplicability to any proposal that any party might make during the term of the Agreement. It was recognized, however, that individual carriers and organization committees on such carriers might not in all instances understand Article VI in the same way as the participants in the discussions understood it, and that consequently disagreements between such individual carriers and committees might arise with respect to specific proposals that one of the parties might seek to progress. The Agreement containing Article VI is a mediation agreement and hence such controversies arising over its meaning or application might be the subject of application to the National Mediation Board for an interpretation as to its meaning or application under Section 5 Second of the Railway Labor Act.

Because of the intimate knowledge and understanding that our Committees had as to the application of Article VI, and the relatively lesser actual participation of the

Mediation Board in developing its terms, it was mutually considered desirable that arrangements be made to utilize the knowledge of the Committees to resolve controversies arising on individual properties rather than to have them become subjects of application to the Mediation Board for interpretation. The Carriers' Conference Committees on the one hand and the Employes' National Conference Committee on the other agreed that they would exercise their best efforts, where controversies might arise on individual properties, to get the parties they respectively represent to apply Article VI in accordance with the knowledge and understanding of the respective Committees. It was thus anticipated that in most instances such disagreements as might arise on individual properties would be resolved practically at their inception.

It was recognized, however, that there might be instances in which neither the Carriers' Conference Committees nor the Employes' National Conference Committee would wish to express a judgment without an opportunity for conference between the respective committees. It was agreed that in such instances the Committees would meet, jointly consider the matter and make a joint decision. Although it was not considered likely that the Committees would be unable to agree as to the proper disposition of any such matter, cognizance was taken of the possibility of such disagreement. It was therefore further agreed that if such disagreement should arise the Committees would then explore possible means of resolving the disagreement and endeavor to find a mutually acceptable one.

At our meeting on July 15 we agreed that the Carriers' Conference Committees and the Employes' National Conference Committee should meet on the following day to give joint consideration in accordance with the oral Agreement above outlined to the disagreements that had arisen

concerning the applicability of Article VI to the proposals served on or about May 22, 1957 by the Brotherhood of Maintenance of Way Employees, and to other proposals by various organizations served on various carriers as to which disagreements had been submitted, to the Committees, priority being given to the Brotherhood of Maintenance of Way Employees' proposals. You are in error in stating that there was any agreement that the meeting was "for the purpose of analyzing and discussing the ten separate requests contained in the Brotherhood of Maintenance of Way notice of May 22, 1957".

You are also in error in attributing to Mr. Carroll suggestions "that the parties meet for the purpose of definitely determining which, if any, of the items contained in the notice of May 22, 1957 were not barred as to initiation and progression by Article VI of the November 1, 1956 Agreement". Mr. Carroll had suggested many times since May 22, 1957 that the carriers establish Conference Committees to negotiate with the Brotherhood representatives concerning the notices of May 22, 1957 and that if in the course of negotiations it appeared that some items were questionable under Article VI efforts could be made to resolve such questions in negotiations and if they were not so resolved consideration could then be given to other appropriate means for their resolution. He has objected strenuously to the uniform and apparently concerted refusal to negotiate on grounds of the asserted blanket applicability of Article VI to bar the proposal in its entirety. He repeated these suggestions and objections at the meeting of July 15. The carrier representatives declared themselves to be without authority to negotiate in accordance with Mr. Carroll's suggestions.

Between the meetings of July 15 and July 16 the Employees' National Conference Committee gave intensive

consideration to the applicability of Article VI to those proposals before the Committee dealing with stabilization of employment, namely, the Brotherhood of Maintenance of Way Employees' proposal of May 22, 1957, the proposal of the Brotherhood of Railway and Steamship Clerks, Freight Handler, Express and Station Employees contained in its notice of February 11, 1958 on the Boston & Maine Railroad, and the proposal of The Order of Railroad Telegraphers contained in its notice of January 25, 1958 on the Minneapolis & St. Louis Railway Company. We felt the discussion with the Carriers' Conference Committee would be facilitated if we embodied the conclusions arrived at during our consideration in proposed decisions for presentation to the Carriers' Conference Committees at the beginning of our July 16 meeting. We handed you copies of those proposed decisions shortly after our meeting began and for convenience I am attaching copies hereto. We were in no way averse to discussion of the proposed decisions or of any decisions the Carriers' Conference Committees might have proposed in these cases. We were unwilling to enter upon discussions appropriate only to negotiations of the proposal with committees expressly disclaiming authority to negotiate.

Having failed in the effort to maneuver the Employees' National Conference Committee into engaging in the substance of negotiations with committees not authorized to negotiate, the Carriers' Conference Committees are now standing on the position that the proposals in all the three cases are barred by Article VI and that conclusion is expressed in the proposed decisions attached to your letter of July 17. Obviously, as we informed you during our meeting on July 17, we cannot join in these proposed decisions and you made it clear that the Carriers' Conference Committees would not join in the proposed decisions we handed you on the previous day. It is evident that the

Committees are unable to agree upon a joint disposition of these matters.

Under these circumstances the Employees' National Conference Committee has given careful consideration to possible means of resolving these differences. In all prior cases in which our Committees have explored this subject, the only means that either your Committees or our Committee has been able to suggest, and the only means of which we have been able to conceive in the present situation, is the selection or designation in some fashion of some outside arbiter or arbiters and the submission of the disagreement to such an ad hoc tribunal for decision. In view of our conception of the relationship of Article VI to the subject of stabilization of employment, as set forth in our proposed decisions, our Committee does not find it acceptable to relegate this matter to such decision. If the Carriers' Conference Committees with the Employees' National Conference Committee to give consideration to some other method of resolving the disagreement which we have not been able to think of our Committee will give consideration to it provided that I am promptly notified of your desires in this respect. Since we do not anticipate the suggestion of such alternative means, we feel that the handling of the matters involved in these three cases pursuant to our oral agreement has been concluded. The parties involved may be expected to proceed toward a composition of their differences under the procedures of the Railway Labor Act.

Since you, in your letter of July 17, have taken the occasion to express the view of the carrier representatives that the obligations devolving upon the parties under our oral agreement of November 1, 1956 were not fulfilled in this instance, it appears to us appropriate to add this general observation. The organizations represented by the Employees' National Conference Committee have consistently refused permission to their committees on individual car-

riers to initiate or progress proposals barred by Article VI as mutually understood on November 1, 1956. On the other hand, our experience indicates that in a very large proportion of instances in which committees of our organizations on individual carriers have sought to negotiate matters clearly not barred by Article VI, the carriers have almost automatically invoked Article VI as a bar to negotiations. The number of disagreements that have been submitted to our Committees to date falls far short of measuring the extent to which this has occurred. The Employees' National Conference Committee feels very strongly that the obligations devolving upon the Carriers' Conference Committees under the oral Agreement of November 1, 1956 to use their best efforts to get the carriers they represent to understand and apply Article VI as it was understood by those who negotiated it have not been fulfilled.

Very truly yours,

Employees' National Conference Committee,  
Eleven Cooperating Railway Labor  
Organizations,

By G. E. Leighty,

*Chairman.*

**PLAINTIFF'S EXHIBIT NO. 19.****Interstate Commerce Commission.****Finance Docket No. 19432****Chicago, Saint Paul, Minneapolis & Omaha Railway Company Lease.****Decided December 28, 1956.**

Lease by the Chicago & North Western Railway Company of the lines of railroad and other properties owned, used, or operated by the Chicago, Saint Paul, Minneapolis & Omaha Railway Company, approved and authorized. Conditions prescribed.

Lowell Hastings, Jordan Jay Hillman, Burton K. Wheeler, Edward K. Wheeler, and Eldon S. Olson for applicant. Clarence M. Mulholland, Edward J. Hickey, Jr., and William G. Mahoney for Railway Labor Executives' association, intervener.

**Report of the Commission.**

Division 4, Commissioners Mitchell, Clarke, and Hutchinson by Division 4:

The Chicago and North Western Railway Company on July 24, 1956, applied under section 5(2) of the Interstate Commerce Act for authority to lease the lines of railroad and other properties owned, used, or operated by the Chicago, Saint Paul, Minneapolis and Omaha Railway Company, hereinafter referred to as the Omaha.

No representations have been made by any State authority and no objection to the granting of the application has been presented by shipper interests. The Railway Labor Executives' Association intervened in opposition to the application. Attempts were made by the applicant and

the intervener to agree upon whether the so-called "Oklahoma conditions", which, the applicant stated, would be acceptable to it, or the "New Orleans Terminal conditions", which the intervener preferred, should be imposed as conditions to the approval of the proposed transaction. The informal efforts were stalemated, and by order dated September 19, 1956, it was directed that the matter be handled by modified procedure in accordance with the Commission's rules of practice. The applicant filed its opening statement of fact and argument on October 15, 1956. By letter of October 30, 1956, the intervener agreed that the Oklahoma conditions would be accepted by it, and indicated that a reply to the applicant's opening statement would not be filed.

Under the circumstances discussed hereinabove, and recognizing that the requested authorization does not contemplate any change in the present transportation service to the public, it is our opinion that neither further modified procedure nor a public hearing is necessary in the public interest.

Subsequent to the acceptance by the applicant of the Oklahoma conditions, the labor organization on November 30, 1956, filed a petition for modification or clarification of the employee protective conditions. The petition purportedly was filed because information had been received by the petitioner indicating that a substantial number of railway employees "have already been adversely affected by action of the carrier parties in anticipation of I. C. C. approval of their pending lease agreement." The petitioner made specific reference to the closing of a large modern shop and certain changes in the employment of clerical forces. Based upon those allegations, the petitioner requests that the protective conditions be applied to cover employees whether they are affected by actions taken in anticipation of our approval of the lease or by

actions subsequent to such approval. The decision in *Pacific Electric Ry. Co. Abandonment*, 275 I. C. C. 649, 677, is cited as an applicable precedent.

The applicant filed a reply to the petition on December 6, 1956, and the petitioner filed an answer thereto. The latter was returned as being a reply to a reply not permitted under the Commission's rules. By letter dated December 13, 1956, counsel for the applicant summarized its position, and asserted that no employee of either carrier involved had been adversely affected in anticipation of our approval of the proposed lease. It is conceded, however, that the accounting forces of the two carriers have been substantially consolidated in accordance with the terms of the Washington Job Protection Agreement accepted by the carriers and the labor organizations that were involved. Notwithstanding the attempted refutation of the labor organization's contentions, the applicant states it would accept the requested ruling if we deem it to be in the public interest in this instance.

In view of the failure of the carriers involved and the organization representing railway employees to reach an agreement our approval and authorization of the proposed lease will be subject to the same conditions for the protection of adversely affected employees as those prescribed in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I. C. C. 177. To the extent that any action by either carrier herein, in anticipation of the approval of the proposed lease, adversely affects employees not otherwise protected by agreements amicably arrived at, the aforesaid conditions will be applied to afford the protection required under section 5(2)(f) of the act. Disputes as to particular employees or groups of employees affected by actions of the carriers in anticipation of the approval of the lease, if any, may be resolved by following the procedure set forth in condition No. 8 of the Oklahoma

conditions (appearing at 257 I. C. C. 200), which provides for consideration and determination by an arbitration committee of questions regarding the eligibility for protection of persons and groups elsewhere described in the conditions.

Subject to the conditions for the protection of railway employees referred to, we find that the lease by the Chicago and North Western Railway Company of the lines of railroad and other properties owned, used, or operated by the Chicago, Saint Paul, Minneapolis and Omaha Railway Company, described herein, is a transaction within the meaning of section 5(2) of the Interstate Commerce Act; that the terms and conditions proposed are just and reasonable; and that the transaction will be consistent with the public interest.

. . . . .

Conditions for Protection of Employees, Commonly Referred to as the "Oklahoma Conditions", Prescribed by the I. C. C. in Its Order Issued May 17, 1944 in Finance Docket 14221, Oklahoma Railway Company Trustees Abandonment of Operation, etc.

4. If, as a result of the abandonment of operation herein permitted and the purchases, etc., herein authorized, hereinafter referred to as the transaction, any employee of Robert K. Johnston and A. C. DeBolt, trustees of the Oklahoma Railway Company, of The Atchison, Topeka and Santa Fe Railway Company, or of Joseph B. Fleming and Aaron Colnon, trustees of The Chicago, Rock Island and Pacific Railway Company; hereinafter respectively referred to as the Oklahoma, the Santa Fe and the Rock Island, and collectively as the carriers, is displaced, that is placed in a worse position with respect to his compensation and rules governing his work conditions, and so long thereafter as he is unable, in the exercise of his seniority

rights under existing agreements, rules, and practice, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the monthly compensation received by him in the position from which he was displaced. The latter compensation is to be determined by dividing separately by 12 the total compensation received by the employee and the ~~total~~ time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of this transaction (thereby producing average monthly compensation and average monthly time paid for in the test period). If his compensation in his retained position in any month is less than the aforesaid average compensation in the test period, he shall be paid the difference, less compensation at the rate of the position from which he was displaced for time lost on account of his voluntary absences in his retained or current position, but if in his retained position he works in any month in excess of the average monthly time paid for in the test period, he shall be compensated for the excess time at the rate of pay of the retained position; provided, however, that nothing herein shall operate to affect in any respect the retirement on pension or annuity rights and privileges in respect of any employee, provided, further, that if any employee elects not to exercise his seniority rights he shall be entitled to no allowance, and provided, further, that no allowance shall be paid to any Oklahoma employee who fails to accept employment, with seniority rights in Oklahoma City, Oklahoma, with the Santa Fe or Rock Island if either of said two last named carriers offers him a position, the duties of which he is qualified to perform.

The period during which this protection is to be given, hereinafter called the protective period, shall extend from the date on which the employee was displaced to the expiration of 4 years from the effective date of our order herein; provided, however, that such protection shall not continue for a longer period following the effective date of our order herein than the period during which such employee was in the employ of the carriers prior to the effective date of our order.

5. If, as a result of the transaction herein approved, any employee, hereinafter referred to as a dismissed employee, of the carriers is deprived of employment with said carriers because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as result of the transaction herein approved, he shall be accorded a monthly dismissal allowance equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of this transaction. This allowance shall be made during the protective period to each dismissed employee while unemployed, provided, however, that no such allowance shall be paid to any Oklahoma employee who fails to accept employment, with seniority rights in Oklahoma City, Okla., with the Santa Fe or Rock Island, if either of said two last named carriers offers him a position, the duties of which he is qualified to perform.

The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the carriers, should agree

upon a procedure by which the carriers shall be currently informed of the wages earned by such employee in employment other than with the carriers, and the benefits received.

The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service after being notified by the carriers of a position, the duties of which he is qualified to perform and for which he is eligible, or in the event of his resignation, death, retirement on pension, or dismissal for good cause.

6. No employee affected by the transaction approved herein shall be deprived during the protective period of benefits attached to his previous employment, such as free transportation, pensions, hospitalization, relief, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees on his home road, in active service or on furlough, as the case may be, to extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

7. Any employee retained in the services of the carriers involved in the transaction herein approved or who is later restored to service after being entitled to receive a dismissal allowance, and required to change the point of his employment as a result of the transaction, and within the protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and his immediate family, and for his own actual wage loss, not to exceed 2 days, the exact extent of the responsibility of the carriers to be agreed upon in advance by the said carriers and the employees affected; provided, however, that changes in place of residence, subsequent to the initial change caused by the

transaction, which result from the exercise by the employee of his seniority rights shall not be considered as within the foregoing provision.

8. In the event that any dispute or controversy arises with respect to the protection afforded by the foregoing Conditions Nos. 4, 5, 6, and 7, which cannot be settled by the carriers and the employee, or his authorized representatives, within 30 days after the controversy arises, it may be referred by either party, to an arbitration committee for consideration and determination, the formation of which committee, its duties, procedure, expenses, et cetera, shall be agreed upon by the carriers and the employee, or his duly authorized representatives.

9(a) The following condition shall apply, to the extent it is applicable in each instance, to any employee who is retained in the service of any of the carriers (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment within the protective period as a result of the transaction herein approved and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to May 17, 1943, to be unaffected by the filing of the applications herein. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligation under the contract.

3. If the employee holds unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by the consummation of the transaction herein approved and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this condition.

(c) No claim for loss shall be paid under the provisions of this condition which is not presented within one year after the date employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively, and these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expense of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(Defendants' Exhibits 1-16, 19-21 and A, B and C were attached to the Answer and Answer to Amendment to Complaint. During trial the identical exhibits were introduced into evidence and made part of the Record as Defendants' Exhibits 1-16, 19-21 and A, B and C. These exhibits are printed in this Appendix at pages 32 to 68 and 70 to 73.)

**DEFENDANTS' EXHIBIT NO. 7-A.**

Mr. E. C. Thompson  
Executive Secretary  
National Mediation Board  
Washington, D. C.

February 13, 1958  
File 69-6-39

Dear Sir:

Please refer to your letter of February 10, 1958 concerning application for mediation received from the Order of Railroad Telegraphers covering a dispute between that organization and the C&NW on the following subject:

"Request for Rule reading:

"No position in existence on December 3, 1957 will be abolished or discontinued except by agreement between the carrier and the Organization."

Attached is copy of General Chairman Boyington's letter of December 23, 1957 with which the purported "Section 6 Notice" was served. Attached also are copies of my letter of December 24, 1957 to Mr. Boyington, copy of my letter of January 21, 1958 to Mr. Boyington, copy of Mr. Boyington's letter of January 27, 1958 to me, which indicate the correspondence which has been exchanged relative to this request. As is indicated in that exchange of correspondence, meeting was held with the General Chairman, at which time representative of the Grand Lodge of the O. R. T. was present, on January 17, 1958.

It is and has been the position of the carrier in handling this matter with the organization that the purported notice and request for rule does not in fact constitute proper subject for a Section 6 notice in that the notice does not in

fact concern "rates of pay, rules, and working conditions, \* \* \*", the subject matter on which carriers and representatives of the employees are required to exercise every reasonable effort to reach agreements under the Railway Labor Act, but that on the contrary the purported notice constitutes a usurpation of the prerogative of management in determining its requirements of employees in the craft or class represented by the O. R. T. The attempted "rule" has no relation whatsoever to the rules, rates of pay, or working conditions applicable to positions, but constitutes an attempt to freeze positions regardless of the necessity for such positions.

In your letter you also called attention to the fact that the organizations had called attention to what they called the "status quo provisions, Section 6 of the Railway Labor Act". The carrier does not understand that in a case such as the instant case, where there is no rule but only a request for a rule, the service of a Section 6 notice and the status quo provisions can or do result in the carrier being required to operate as if the proposed rule was in fact already negotiated.

Your letter of February 10, 1958 does not indicate whether the application for mediation covers the entire C&NW (including the former CStPM&O Railroad), or is limited to telegraphers employed by the C&NW as it existed prior to the lease of the CStPM&O under the ICC authority. For your information, however, an identical request was received from the General Chairman of the O. R. T. on the Twin Cities Division—C&NW (former CStPM&O) and the exchange of correspondence between that General Chairman and the C&NW is substantially identical to the exchange of correspondence attached.

Yours truly,

(Signed) T. M. Van Patten.

BC: Messrs. B. W. Heineman, C. J. Fitzpatrick, L. S. Provo, S. C. Jones, C. McGowan.

**DEFENDANTS' EXHIBIT NO. 12-A.**

**National Mediation Board  
Washington**

**July 16, 1958**

**Case No. A-5696**

**Mr. T. M. Van Patten, Director of Personnel  
Chicago & North Western Railway Co.  
400 West Madison Street  
Chicago 6, Illinois**

**Mr. G. E. Leighty, President  
The Order of Railroad Telegraphers  
3860 Lindell Blvd.  
St. Louis 8, Missouri**

**Gentlemen:**

Reference is made to dispute between your respective carrier and organization, in which mediation services of the Board were invoked by The Order of Railroad Telegraphers, described as follows:

**"Request for Rule reading:**

**"No position in existence on December 3, 1957; will be abolished or discontinued except by agreement between the carrier and the organization."**

For your information, the file in this case was closed on July 16, 1958, account of both parties' refusal to arbitrate.  
By order of the National Mediation Board.

**E. C. Thompson,  
Executive Secretary.**

## DEFENDANTS' EXHIBIT NO. 17.

State of South Dakota  
County of Minnehaha ss.

IN CIRCUIT COURT  
Second Judicial Circuit.

The Order of Railroad Telegraphers,  
*Plaintiff,*

*vs.*

Chicago and North Western Railway  
Company and Roy Doherty, Chris  
A. Merkle and Fred Lindekugel,  
individually and as Public Utilities  
Commissioners and as constituting  
the Public Utilities Commission of  
the State of South Dakota,  
*Defendants.*

RETURN ON ORDER TO SHOW CAUSE AND MOTION  
TO DISMISS.

The defendant, Public Utilities Commission of the State of South Dakota, and Roy Doherty and Fred Lindekugel, individually and as members of said Commission, as a showing and return to the Order to Show Cause issued herein, submit to the Court the following as grounds and reasons why said action should be dismissed as to said Defendants and the application for a temporary restraining order and permanent junction should be denied.

I.

Chapter 52.05 of the South Dakota Code, 1939, relating to appeals from Orders of the Commission constitutes the sole, only and exclusive remedy "to review, reverse, cor-

rect, or annul any action of the Commission, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its duties." Petitions for rehearing, filed respectively May 21, May 26, June 2, June 7, and June 9th, 1958, were on June 13, 1958 denied and the Order duly served.

## II.

Correctly construed the Commission's Order does not conflict with the Railroad Labor Act. The requirement in the Order for a progress report after the expiration of 120 days opened the door to any contingency which may arise including negotiations, strike, federal intervention, proceedings before the Mediation Board, Adjustment Board, or otherwise, in putting the Central Agency Plan into effect. The purpose of the Order is to obviate, if possible, the closing and complete withdrawal of agency service at 52 stations and continuing part-time agency service thereat. Hence, a service order is clearly authorized under Section 52.0202, which reads in part as follows:

"Section 52.0202: Whenever in the judgment of such Commission it shall appear that . . . any change of its stations . . . or any change in the mode of operating its line, or lines, or conducting its business is reasonable and expedient in order to promote the security, convenience, and accommodation of the public, the Commission shall inform such common carrier of the improvement or changes which it adjudges to be proper, by notice thereof in writing by leaving or mailing by registered mail a copy thereof, certified by its secretary, to or with any station agent, clerk, treasurer, or any director of such common carrier."

The only party to the Order is the Chicago and North Western Railway Company. The railroad company is "authorized and directed to forthwith (i. e., immediately

and with reasonable dispatch) to inaugurate and put in effect its proposed centralized agency plan." It directs the Railroad Company at the expiration of 120 days from the date thereof to "submit to the Commission a report of the progress being made in inaugurating its plan for central agency service." In its report, the Commission, on Page 9, states "it is not within our jurisdiction to interpret these (Labor Union) contracts." In legal effect, the Commission's Order requires good faith effort by the Railroad to carry it out. It contains no directive to circumvent the Railroad Labor Act, or violate any contract which may stand in the way of carrying out our service order.

### III.

Section 52.0202 is the only statute under which the Commission may issue to a railroad a service order. Under it sidings have been built, trains operated and stations built. Section 52.0932, relating to station abandonment, is restricted to giving consent only.

Pursuant to the authority and direction of this statute (Section 52.0202) the Commission issued its Report and Order. Obviously, the Commission, under this Section of the Statute, after notice and hearing, with all the facts in 2054 pages of transcript, and 79 Exhibits before it in the exercise of its judgment and as directed by the statute was empowered to issue to the Chicago and North Western Railway a directory order to effectuate changes in any of its stations and mode of operating its lines, required in the public interest to (a) maintain its service and financial stability; and, (b) to keep and protect part-time agency service at the subject stations. The Report and Order was served on a station agent as required by this statute.

IV.

The Commission's Order is directed solely to the Chicago and North Western Railway Company, Plaintiff, if proceeding under Section 33.0403 as a party in interest, has not alleged in its complaint its interest in the case, or identified any named individual in whose behalf the action has been instituted. Constitutional rights flow only to one damaged by an Order of the Commission.

V.

Hearings by the Commission, after due notice, were held at Pierre, Huron and Rapid City, South Dakota, in this proceeding, embracing nine days.

Section 52.0202 does not fix the place where the Commission must hold a hearing. Its proceedings are controlled by Section 52.0109, which provides:

"Such Public Utilities Commission may in all cases conduct the proceedings, when not otherwise particularly prescribed by law, in such manner and places as will best conduce to the proper dispatch of business and the ends of justice."

Rule I Practice. "General sessions of the Commission for hearing of formal complaints will be held at its office in the Capital City of Pierre, on such days and at such hours as the Commission may designate."

VI.

A certified statement of the Secretary of the Commission showing the record relating to the issuance and service of the Report and Order in Docket F-2499 is attached as a part of this showing.

## VII.

A copy of the Commission's Order denying petitions for rehearing is attached as a part of this return.

Wherefore, Defendants, the Public Utilities Commission, and the members thereof individually and as a Commission pray for judgment dismissing the action as to them and denying the relief demanded by the Plaintiff.

Herman L. Bode,  
*Attorney for and Counsel  
for the Said Defendants.*

## Affidavit.

State of South Dakota, }  
County of Hughes. } ss.

Herman L. Bode, being first duly sworn, deposes and says: That he is the Counsel for the Public Utilities Commission of the State of South Dakota; that he has read the foregoing Return on Order to Show Cause and Motion to Dismiss, and knows the contents thereof; and, that the facts stated therein are true to his own knowledge, except as to matters therein stated on information and belief and that as to such matters he believes them to be true.

Herman L. Bode.

Subscribed and sworn to before me this 16th day of June, 1958.

(Seal)

C. T. Nelson,  
*Notary Public.*

My Commission expires Dec. 1, 1960.

## Statement.

The Three Commissioners, Doherty, Merkle and Lindenkugel, met on Friday, May 9, on the question of the issuance of Order in Docket F-2499, the Chicago and North Western station consolidation case. The majority report had been written and Commissioner Merkle was working on his dissent.

Inasmuch as the Commission would not all be together again for a few days, it was agreed that the Report and Order would be dated May 9, and the work of cutting the stencil, mimeographing same, etc., started, but that the Order would not be mailed or promulgated until Commissioner Merkle had completed his dissent. This was done.

The material consisting of 19 pages with 300 copies of the document was all mimeographed and ready to mail on Monday afternoon, May 12, 1958. The envelopes had been addressed to all parties of record. It was then discovered that the envelopes could not hold the enclosure and new envelopes had to be addressed so that *none* of the Reports and Orders were mailed until Tuesday a.m., May 13, 1958. All parties of record were mailed notices at the same time and in the same mail and all by first class mail. At 12:00 Noon on May 13, 1958 I personally served a copy of the Report and Order on the Station Agent of the Chicago and North Western Railway Company, at Pierre, South Dakota, as required by Section 52.0202 of the South Dakota Code.

E. F. Norman,  
Secretary.

A true statement of the record.

E. F. Norman,  
Secretary.

Dated: June 16, 1958.

(Official Seal)

At a Regular Session of the Public Utilities Commission of the State of South Dakota, held in its offices, in the City of Pierre, the Capital, this 13th day of June, 1958.

Present: Commissioners Doherty and Lindekugel

(Merkle dissents)

In the matter of the Application of  
The Chicago and North Western  
Railway Company for Authority  
to Revise, Adjust and Rearrange  
its Agency Service in South  
Dakota.

#### ORDER DENYING REHEARING (F-2499).

On the 9th day of May, 1958, the Commission issued its Report and Order in Docket F-2499, involving the Centralization of Agency Service at numerous stations on the Chicago and North Western Railway Company's lines in South Dakota, to which Report and Order, reference is hereby made.

On the 21st day of May, 1958, the Order of Railroad Telegraphers filed with the Commission a formal petition for rehearing; on May 26, 1958 the cities of Wessington Springs, Hitchcock, Athol, Houghton, Bonesteel, Mansfield and Northville jointly filed a formal petition for rehearing; and, on June 2, 1958, the cities of Hartford, Humboldt and Montrose, jointly, and the cities of Carthage and Canova, jointly, filed formal petitions for rehearing; and on June 7, 1958, the cities of Hermosa, Quinn, Oral, Buffalo Gap, Oelrichs, New Underwood, jointly, and Astoria, singly, filed formal petitions for rehearing; and on June 9, 1958, the town of Wood, singly, and the Farmers Co-operative Association of Dallas filed petitions for rehearing; and all appli-

cants, except Wood and the said Co-operative Association requested suspension of the Order issued in Docket F-2499, during the pendency of the petition for rehearing if granted.

Each of the several petitions filed after May 21, 1958, except Wood, and the Farmers Co-operative Association incorporate therein by reference the petition for rehearing filed by the Order of Railroad Telegraphers.

In disposing of these applications, the Commission deems it important to re-emphasize the precise nature of the Order it has entered. What it has done is to authorize and direct the carrier forthwith to place in effect the Central Agency Plan; and, pending further report by the carrier as to the actual operation of this Plan, it has deferred action upon the carrier's request for authority to abandon entirely the stations in question.

This Order is directed only to the carrier; and the carrier has acted to place it in effect. The Commission has thus far had no evidence whatsoever of any adverse effect upon shippers which would warrant withdrawal of the Order or suspension of its operation.

The Applications for Rehearing are founded in large part upon alleged contractual limitations upon the carrier which, if they do in fact exist, might interfere seriously with the economies and efficiencies to be realized by the carrier through the Central Agency Plan. The carrier, against whom this Order is solely directed, has not relied upon any such alleged contractual limitations as a reason why it should be excused from compliance. The effect of such limitations, if any do exist, presumably will be reflected in the report to be rendered by the carrier at the end of the 120-day period, at which time the Commission is to give further consideration to the carrier's request for authority to close the stations involved.

In its Report the Commission expressly stated that

whether such contractual limitations as are alleged to exist, do exist in fact, depends upon the proper interpretation to be given to the carrier's contracts—and we stated that this was beyond the Commission's province and jurisdiction. Reaffirming this view, we note that there were contained in our Findings and Order certain statements which make it appear as if we had interpreted these contracts, and which, in any event, are unnecessary to the exercise of the statutory power upon which our Order was based. Accordingly we deem it desirable to clarify, and we hereby amend our Findings and Order so as to eliminate and modify any statement therein which may be construed as an adjudication of the validity of or an interpretation or application of any labor agreement, or as a directive to violate any contract which may in fact exist or to circumvent the Railway Labor Act in connection with the execution of our Order, by eliminating Findings Nos. 6 and 7, and the words "at one agent's salary" in Finding No. 8, and the words "at one agent's wages" in the first ordering paragraph of our Order.

The Commission having considered the allegations of the several petitions for rehearing and reviewed the record in this proceeding; it is therefore

Ordered, that all Petitions and Applications for rehearing in Docket F-2499 be, and the same are, hereby denied.

By Order of the Commission:

E. F. Norman,

*Secretary.*

(Official Seal)

**DEFENDANTS' EXHIBIT NO. 18.**

**The Association of Western Railways  
Room 482, Union Station Building**

**D. P. Loomis, Chairman,  
R. F. Welsh, Executive Secretary,  
H. E. Greer, Secretary,**

**Chicago 6, November 9, 1956**

**Circular No. 772-11**

**Chief Operating Officers, Western Railways:  
(Represented by Western Carriers' Conference Committee)**

Referring to our Circular No. 772-9 of November 1, 1956, transmitting copies of agreement of that date between the carriers represented by the Eastern, Western and South-eastern Carriers' Conference Committees and their employees represented by the Eleven Cooperating Railway Labor Organizations:

The Carriers' Conference Committees and the Employees' National Conference Committee have entered into an understanding that controversies over the meaning or the application of the November 1, 1956 Agreement which are not settled on the individual properties will be referred to the Committees signatory to the Agreement for disposition. It was agreed that instructions to that effect would be issued by the three regional bureaus to the railroads parties to the Agreement, and by the Employees' National Conference Committee to the respective General Chairmen of the Eleven Cooperating Railway Labor Organizations on the individual carriers.

The understanding contemplates that if the Committees signatory to the Agreement are unable to resolve the question, such Committees will then endeavor to agree upon a

method for final disposition of the dispute. If the Committees can neither resolve the question, nor agree upon a method for final disposition, it has been agreed that Section 5, Second, of the Railway Labor Act will then be invoked. Section 5, Second, reads as follows:

"Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for and interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days."

Accordingly, any controversy arising on your railroad concerning the meaning or application of the Agreement of November 1, 1956, which you are unable to settle on the property, should be submitted to the undersigned by letter (please furnish 30 copies thereof) containing all of the pertinent facts, for handling by the Carriers' Conference Committees and the Employees' National Conference Committee, Eleven Cooperating Railway Labor Organizations, pursuant to the understanding herein outlined.

Yours truly,

R. F. Welsh,  
*Executive Secretary.*

**DEFENDANTS' EXHIBIT NO. 21.**

**Decision.**

The proposal of the Brotherhood of Maintenance of Way Employes contained in its notices of May 22, 1957 on the various railroads deals with stabilization of employment. Article VI, paragraph (e) of the November 1, 1956 Agreement excludes proposals on that subject from any restriction upon serving or progressing of notices pursuant to the Railway Labor Act or the negotiation of agreements pertaining thereto. Proposals of this character give rise to no dispute for resolution by the Carriers' Conference Committees and the Employes' National Conference Committee.

July 16, 1958

Washington, D. C.

**DEFENDANTS' EXHIBIT NO. 22.**

**Decision.**

The proposal of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes contained in its notice of February 11, 1958 on the Boston and Maine Railroad deals with stabilization of employment. Article VI, paragraph (e) of the November 1, 1956 Agreement excludes proposals on that subject from any restriction upon serving or progressing of notices pursuant to the Railway Labor Act or the negotiation of agreements pertaining thereto. Proposals of this character give rise to no dispute for resolution by the Carriers' Conference Committees and the Employes' National Conference Committee.

July 16, 1958

Washington, D. C.

**DEFENDANTS' EXHIBIT NO. 23.****Decision.**

The proposal of the Order of Railroad Telegraphers contained in its notice of January 25, 1958 on the Minneapolis and St. Louis Railway Company deals with Stabilization of Employment. Article VI, paragraph (e) of the November 1, 1956 Agreement excludes proposals on that subject from any restriction upon serving or progressing of notices pursuant to the Railway Labor Act or the negotiation of agreements pertaining thereto. Proposals of this character give rise to no dispute for resolution by the Carriers' Conference Committees and the Employees' National Conference Committee.

July 16, 1958

Washington, D. C.

**DEFENDANTS' EXHIBIT NO. 24:**

Letterhead of National Mediation Board, Washington.

**Mediation Agreement****between**

Chicago Great Western Railway Company

and its employees represented by

Railroad Yardmasters of America

N.M.B. CASE NO. A-5545

In settlement of the differences involved in National Mediation Board Docket A-5545, as described in an application for mediation dated August 2, 1957, in accordance with the provisions of the Railway Labor Act, as amended, it is mutually agreed by and between the Chicago Great Western Railway Company and its employees represented

by the Railroad Yardmasters of America, that the questions in controversy shall be and are hereby disposed of as follows:

1—Effective December 1, 1952, monthly rates of pay are increased \$8.00, equivalent to the so-called Guthrie Award.

2—Parties hereto subscribe to and accept provisions of agreements between the Railroad Yardmasters of America and railroads represented by the Western Carriers' Conference Committee, identified as follows:

(a) Agreement dated August 12, 1954—N.M.B. Case A-4521.

(b) Agreement dated January 25, 1956.

(c) Agreement dated May 3, 1957,—N.M.B. Case No. A-5196.

under the same terms and conditions as applicable to parties to the original agreements. All employees who were on the payroll of the carrier on the effective dates of the several wage increases, or who were hired subsequent thereto, regardless of whether they are now in the employ of the carrier, shall receive the amounts to which they are entitled under the Agreements. In case any such employees are now deceased, the amounts due them will be paid the surviving widows, or in the absence of surviving widows, on behalf of dependent minor child or children, if any, or to their estates.

3—Carrier agrees to maintain during period provided in Article III of the Agreement of May 3, 1957, the Yardmaster positions assigned as of the date of this agreement, unless business conditions justify further reductions—in which event the Carrier will negotiate agreement with the Railroad Yardmasters of America before such reductions are effected.

4—Separate Memorandum Agreements have been executed in connection with disputes involving deceased Yardmaster W. E. Schwader and R. Jefferson, formerly employed as Yardmaster at Minneapolis, Minnesota and are attached hereto and made a part of this settlement.

This agreement is in full and final settlement of all pending requests of the employees for changes in rates of pay, rules and working conditions.

Signed at Chicago, Illinois, this 6th day of December, 1957.

For the Employees:

/s/ M. G. Schoch,  
*President, Railroad Yardmasters  
of America.*

For the Carrier:

/s/ D. K. Lawson,  
*Assistant to President, Chicago  
Great Western Railway Co.*

Witnessed:

/s/ W. G. Rupp,  
*Mediator, National Mediation  
Board.*

### DEFENDANTS' EXHIBIT NO. 25.

#### Mediation Agreement between Railroad Yardmasters of America and Missouri-Kansas-Texas Lines.

In full, complete and final settlement of all differences set forth in files of Docket Cases Nos. A-5151 and A-5515 of the National Mediation Board, and under the provisions of the Railway Labor Act, as amended, it is hereby mutually agreed between the parties signatory hereto that all differences are disposed of as indicated herein.

It is agreed that Mediation Cases A-5151 and A-5515 covering Section 6 Notices of Railroad Yardmasters of America, dated April 2, 1956, and May 24, 1957, are disposed of as follows:

- (1) Carrier agrees to accept and apply National Agreement dated May 3, 1957, between railroads rep-

resented by the Eastern and Western Carriers' Conference Committees and their employes represented by the Railroad Yardmasters of America.

(2) Railroad Yardmasters of America agree to withdraw their Section 6 Notices of April 2, 1956, and May 24, 1957, and further agree not to progress similar notices until expiration of the period set out in Article III—(Duration of Agreement) of the agreement of May 3, 1957.

(3) Carrier agrees to maintain during period provided in Article III of the Agreement of May 3, 1957, the Yardmaster positions assigned as of the date of this agreement, unless business conditions justify further reductions—in which event the Carrier will negotiate agreement with the Railroad Yardmasters of America before such reductions are effected.

Signed at Dallas, Texas, this 8th day of November, 1957.

For the Employes:

Railroad Yardmasters of America,  
/s/ M. G. Farrow,  
*General Chairman and Deputy  
President.*

Approved:

/s/ M. G. Schoch,  
*President.*

For the Company:

Missouri-Kansas-Texas Lines,  
/s/ A. F. Winkel,  
*Assistant General Manager.*

Witnessed:

/s/ O. L. Keiter,  
*Committeeman & Vice Chairman.*  
/s/ Ross R. Barr,  
*Mediator, National Mediation  
Board.*

## COLLOQUY.

(Portion of the Statement of Hon. J. Sam Perry, Judge, on September 8, 1958 concerning Paragraph 20 of the Findings of Fact and Conclusions of Law.)

"So, as I understood it, his testimony was that he was willing to negotiate, as I understood his testimony, that he was at all times ready to deal with each one of these particular problems, he was willing to talk about probably entering some agreement, maybe leading to severance pay or something else, with respect to those who had already been replaced, specific items; but the general program of stability or the incorporation of this rule, I should say, he was unwilling to testify. I do not think there is any question of that, and I certainly did not impute, as far as I was concerned, anything except his viewpoint to it."

"I make those statements because I do not like 'that he refused to negotiate', that being in there, unless it is understood that it was with respect to this particular rule, because he was willing to talk about the problem."

"I object to the words 'on the merits' in there. I do not want the inference—"

"I am going to strike 'the merits of the' so that it will read:

'The plaintiff has refused to negotiate, confer, mediate or otherwise treat with defendant Telegraphers on the proposed change in agreement set forth in the Section 6 notice served by defendant Telegraphers on plaintiff on December 23, 1957.'

so that it will limit his refusal to what his testimony was, and the testimony of the others, and that was that he refused only to negotiate with respect to this particular rule. I do not want this finding of fact to indicate that he was not willing to negotiate with respect to the specific layoffs, because I understood the testimony to be to the contrary.

"I think I ought to put something in there to make my position very clear on that, so there could be no question on a review of this."

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1538) • •

## FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This matter coming on to be heard on the Complaint and Amendment thereto and the Answers thereto filed by defendants, and the Court having set the matter for hearing, having heard the evidence and the arguments of counsel and being fully advised in the premises, the Court finds that:

1. Plaintiff, Chicago and North Western Railway Company, is a corporation duly organized and existing under the laws of the State of Wisconsin, with its principal place of business at 400 W. Madison Street, Chicago, Illinois. Plaintiff is a common carrier engaged in interstate commerce by railroad, and is a "carrier" within the meaning of that term, as defined in the Railway Labor Act, and is subject to the provisions of the Railway Labor Act and the Interstate Commerce Act.

2. Defendant, The Order of Railroad Telegraphers (hereafter referred to as "Telegraphers"), is a voluntary, unincorporated association and a labor organization which is the duly recognized, certified and acting collective bargaining agent pursuant to the Railway Labor Act for the class of employees working on plaintiff's railroad which is commonly described as station, tower and telegraph employees, and has been such collective bargaining agent for many years. Certain individual defendants sued herein are officers of said Association, as indicated in the caption of this complaint. The Order of Railroad Telegraphers and

each individual defendant is sued herein individually and as representative of the class of employees represented by said Association.

3. On December 23, 1957 defendant Telegraphers served formal notice under provisions of Section 6 of the Railway Labor Act (45 U. S. C. Sec. 156) to amend the current agreement between the Telegraphers and plaintiff railroad by adding a rule reading:

"No position in existence on December 3, 1957 will be abolished or discontinued except by agreement between the carrier and the organization."

4. Plaintiff by letter dated December 24, 1957 acknowledged receipt of the Section 6 notice and took the position that the subject matter of the proposed rule was not a proper subject matter for a Section 6 notice. Plaintiff took the same position in the conference held between representatives of the plaintiff and Telegraphers on January 17, 1958, and reiterated the same position in a later later dated January 21, 1958.

5. Under date of January 27, 1958 Telegraphers by R. B. Boyington, its General Chairman on the plaintiff railroad addressed a letter to the Director of Personnel for the plaintiff, T. M. Van Patten, referring to the prior correspondence of the parties restating the position taken at the conference that it was the hope of the representatives of the Telegraphers that through discussion plaintiff's representatives might be persuaded to confer with the defendants on the merits of the proposal. The letter further stated that inasmuch as the Telegraphers had been unsuccessful in persuading the representatives of the plaintiff to change its position and to secure a conference on the Section 6 proposal under the Railway Labor Act, there was no alternative except to treat the letters of the plaintiff dated December 24, 1957 and January 21, 1958 as a refusal to confer under the procedure of the Railway Labor Act and

that it was the intention of the Telegraphers to progress the Section 6 proposal under the procedure of the Railway Labor Act.

6. Under date of February 5, 1958 Telegraphers made application for the Mediation Services of the National Mediation Board.

7. Under date of February 24, 1958 the National Mediation Board by its Executive Secretary addressed a letter to the Director of Personnel of the plaintiff, Mr. T. M. Van Patten, and to the President of the Telegraphers, G. E. Leighty, advising that the application filed by the Telegraphers had been reviewed by the Board, advising further that the Board considered that apparently a proper Section 6 notice has been filed in this matter and accordingly the Board had docketed the application as Case No. 2-5696.

8. Thereafter, the National Mediation Board appointed a mediator to commence mediation with reference to the rule proposed by the Telegraphers, the subject of the Section 6 notice. The mediator met with the parties but was unable to persuade the representatives of the plaintiff to discuss the merits of the rule proposed by the Telegraphers and on May 27, 1958 the mediator informed the parties in writing that he had been unsuccessful in his mediation efforts and requested the parties to submit the dispute to arbitration in accordance with the provisions of the Railway Labor Act. Both parties declined arbitration.

9. A separate Section 6 notice was served on the Chicago, St. Paul, Minneapolis and Omaha Railway asking for a rule change identical with the rule change proposed in the Section 6 notice served by the Telegraphers on the plaintiff. The Chicago, St. Paul, Minneapolis and Omaha Railway Company no longer exists as an operating company, the operation of its railroad properties being carried on by the plaintiff, but the agreement between the Telegraphers and the Chicago, St. Paul, Minneapolis and

Omaha Railway Company has been continued in effect by the plaintiff and governs the relationship between the Telegraphers and the plaintiff as to employees engaged in such operations. The chronology of the handling of the Section 6 notice by the Telegraphers with the Chicago, St. Paul, Minneapolis and Omaha Railway and the actions taken by the plaintiff and the Telegraphers in connection with said notice were identical with the processing of the Section 6 notice served by the Telegraphers on the plaintiff except that the application for mediation was made under date of March 18, 1958 and the case was docketed by the National Mediation Board as Case No. A-5739. Both Case No. A-5739, and Case No. A-5696 involving the dispute between the Telegraphers and the plaintiff, were processed together before the National Mediation Board.

10. Under date of July 10, 1958 the Telegraphers submitted to its membership on the plaintiff property a strike ballot seeking the views of the membership as to whether a strike should be authorized if necessary to secure a satisfactory settlement of the dispute arising from the proposal of the Telegraphers to add to the existing agreements with the plaintiff the rule proposed under the Section 6 notice above referred to. The vote of the membership of Telegraphers on the strike ballot referred to above was almost unanimous in favor of a strike.

11. Under date of August 18, 1958 a strike call and instructions pertaining to conduct of strike were issued by the Telegraphers to all local chairmen, members and employees represented by the Telegraphers on the plaintiff railway and the Chicago, St. Paul, Minneapolis and Omaha Railway, being the Twin Cities Division of the Chicago North Western Railway, to commence on Thursday, August 21, 1958 at 6:00 A. M. Central Standard Time.

12. Under date of August 18, 1958 the National Mediation Board proffered its services on an emergency basis

under its emergency docket as Docket No. E 175. Both parties accepted the proffer. On August 20, 1958 by telegram addressed to the Director of Personnel of the plaintiff and to G. E. Leighty, President of the Telegraphers, the National Mediation Board advised that it was concluding its emergency effort and closing its file on Docket E 175 as of August 20, 1958.

13. On August 21, 1958, after the entry of the temporary Restraining Order by this Court, plaintiff wrote a letter to defendant Telegraphers for the first time taking the position that the Section 6 notice is barred by Article VI of the National Agreement of November 1, 1956 between most of the railroads in the United States and the non-operating railway labor organizations including the Telegraphers and stating that it was the purpose of the plaintiff to submit the question as to whether the Section 6 notice was so barred to the Third division of the National Railroad Adjustment Board for determination.

14. By letter dated August 22nd, the Telegraphers responded to this letter and called attention: (1) to the provisions of Section 5, Second of the Railway Labor Act specifying the National Mediation Board as the appropriate agency to interpret mediation agreements; (2) that the National Mediation Board held that a proper Section 6 notice had been served by the Telegraphers; (3) that the question raised as to application of the moratorium is not properly referable to the National Railroad Adjustment Board not only because of the National Mediation Board has primary specific jurisdiction but because Section 2, First (i) of the Railway Labor Act permits reference to the Adjustment Board only of disputes growing of grievances or out of interpretation or application of agreements concerning rates of pay, rules, or working conditions. Article VI of the National Agreement does not concern itself with rates of pay, rules or working conditions; (4) the matter has not been handled on the property in the usual manner.

15. On August 22, 1956 the plaintiff made an Ex Parte Submission to the Third Division of the National Railroad Adjustment Board attempting to submit to that agency a dispute whether the Section 6 notice served by Telegraphers was barred by the moratorium provisions, Article VI, of the National Agreement. Subparagraph (e) of Article VI specifically excepts from the operation of the moratorium "the serving of notices and the negotiation of agreements dealing with stabilization of employment.

16. Under date of November 9, 1956 the Association of Western Railways, of which the plaintiff is a member, issued Circular No. 772-11 to all the chief operating officers of Western Railways. This circular received by plaintiff calls attention to the fact that the Carriers' Conference Committees which represented the Chicago and North Western and the Employes' National Conference Committee, being the committee which represented the Telegraphers in the National Agreement, entered into an understanding that controversies over the meaning or application of the November 1, 1956 agreement which are not settled on the individual properties will be referred to the Committee's signatories to the agreement for disposition. The circular further provided that if the Committees signatories are unable to resolve the question, they would endeavor to agree upon a method for final disposition, and that if they are unable to agree upon a method of final disposition that Section 5 Second of the Railway Labor Act would then be invoked.

17. The proposed contract change incorporated in the Section 6 notice served by the defendant Telegraphers on December 23, 1957 relates to the length or term of employment as well as stabilization of employment. Collective bargaining as to the length or term of employment is commonplace. There are a variety of collective

bargaining provisions in the railroad industry relating to stabilization of employment as such, including provisions for severance allowance, supplementary unemployment compensation benefits and guaranteed employment. The latter provision in one instance goes back more than thirty years. Contract provisions substantially identical to the rule proposed by the defendant Telegraphers are in existence on at least two railroads.

18. The contract change proposed by defendant Telegraphers in its Section 6 notice of December 23, 1957, relates to "rates of pay, rules and working conditions" and is a bargainable issue under the Railway Labor Act.

19. The dispute giving rise to the proposed strike grows out of the failure of the parties to reach agreement on the proposed contract change incorporated in the Section 6 notice served by defendant Telegraphers on the plaintiff on December 23, 1957.

20. The plaintiff has refused to negotiate, confer, mediate or otherwise treat with defendant Telegraphers on the proposed change in agreement set forth in the Section 6 notice served by defendant Telegraphers on plaintiff on December 23, 1957. The plaintiff did show willingness to negotiate upon the central agency plan, including a possibility concerning severance pay.

21. The dispute giving rise to the proposed strike is a major dispute and not a minor grievance under the Railway Labor Act, and no issue involved therein is properly referable to the National Railroad Adjustment Board.

The Court concludes as a matter of law that:

1. The Complaint, as amended, fails to state a claim upon which relief can be granted, except for the issuance of an injunction expiring at midnight, September 19, 1958.

2. The defendant Telegraphers in serving and progressing its Section 6 notice of December 23, 1957 has

conformed to all of the procedures and requirements of the Railway Labor Act (45 U. S. C. 151 et seq.).

3. No issue involved in the proposed strike which plaintiff seeks to enjoin is properly referable to the National Railroad Adjustment Board.

4. The proposal contained in the Section 6 notice served on December 23, 1957 by the defendant Telegraphers upon the plaintiff presents an issue which is a proper subject of negotiation and is bargainable under the provisions of the Railway Labor Act (45 U. S. C. 151 et seq.).

5. The proffer of services on an emergency basis by the National Mediation Board and its acceptance by plaintiff and defendant Telegraphers initiated a new thirty-day cooling off period under the Railway Labor Act, running from the termination of such services on August 20, 1958.

6. The Court is without jurisdiction to grant injunctive relief, except for an injunction expiring at midnight September 19, 1958.

Enter:

/s/ Joseph Sam Perry,

*Judge of the United States  
District Court.*

September 8th, 1958.

IN THE UNITED STATES DISTRICT COURT.  
• • (Caption 58-C-1538) • •

DECREE.

This Matter coming on to be heard on the Complaint and Amendment thereto and the Answers thereto filed by defendants, and the Court having set the matter for hearing on the merits and having heard the evidence and the arguments of counsel and being fully advised in the premises, and the Court having made and entered this day its Findings of Fact and Conclusions of Law,

Now, Therefore, It Is Ordered, That defendants, members of the Order of Railroad Telegraphers, and their agents, servants, employees, officers and attorneys, and all persons employed by plaintiff on its railroad, and any persons acting in concert or participating with them, and any and all persons acting by, with, through or under them or by or through their order, be and they are hereby restrained until midnight, September 19, 1958 from ordering, authorizing, encouraging, inducing, approving, continuing, starting or permitting any strike on plaintiff's railroad.

It Is Further Ordered that the prayer for injunctive relief extending beyond September 19, 1958 and any other relief prayed for in the Complaint as Amended be and is hereby denied, and except for the relief hereinabove given, the Complaint as Amended is hereby dismissed.

Enter:

/s/ Joseph Sam Perry,

Judge of the United States  
District Court.

September 8, 1958.

**IN THE UNITED STATES DISTRICT COURT****Northern District of Illinois,****Eastern Division.**

**Chicago and North Western Rail-  
way Company, a corporation,  
Plaintiff,**

*vs.*

**The Order of Railroad Telegra-  
phers, et al.,  
Defendants.**

**Civil Action  
No. 58 C 1538.  
Equitable Relief  
Demanded.**

**NOTICE OF APPEAL.**

Notice is hereby given that The Order of Railroad Telegraphers, a voluntary association; James W. Whitehouse, Vice President of said association; Robert C. Williamson, General Chairman of said association; J. M. Jenks, General Secretary and Treasurer of said association; Renel C. Robertson, Thorwald Larsen and Lawrence W. Nelson, Local Chairmen of said association, being all of the defendants in this cause, hereby appeal to the United States Court of Appeals for the Seventh Circuit from:

1. That portion of the Decree of the District Court entered September 8, 1958 restraining the defendants from striking until midnight, September 19, 1958.

2. The order of the District Court entered September 8, 1958 pursuant to Rule 62(c) of the Federal Rules of

Civil Procedure restraining any strike pending determination on appeal.

Alex Elson and Lester P. Schoene,  
*Attorneys for Defendants,*

By Alex Elson,  
*One of Attorneys for Defendants.*

Alex Elson,  
11 S. LaSalle St.,  
Chicago, Ill.,  
*Of Counsel,*

Schoene and Kramer,  
1625—K Street, N. W.  
Washington 6, D. C.

United States of America, }  
Northern District of Illinois. } ss.

Chicago and North Western Rail-  
way Company, a corporation,  
*Plaintiff,*

*vs.*

The Order of Railroad Telegra-  
phers, et al.,  
*Defendants.*

No. 58 C 1538.

### **CERTIFICATE OF MAILING.**

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on September 9, 1958 in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Carl McGowan, Fred O. Steadry, Edgar Vanneman, Jr.,  
and R. W. Russell,  
400 West Madison Street,  
Chicago 6, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 9th day of September, 1958.

Roy H. Johnson,

*Clerk,*

By Gizella Butcher,

*Deputy Clerk.*

(Seal)

IN THE UNITED STATES DISTRICT COURT,  
Northern District of Illinois,  
Eastern Division.

Chicago and North Western Rail-  
way Company, a corporation,  
*Plaintiff,*

*vs.*

The Order of Railroad Telegra-  
phers, et al.,  
*Defendants.*

Civil Action  
No. 58 C 1538.  
Equitable Relief  
Demanded.

AMENDED NOTICE OF APPEAL.

Notice is hereby given that The Order of Railroad Telegraphers, a voluntary association; James W. Whitehouse, Vice President of said association; Robert C. Williamson, General Chairman of said association; J. M. Jenks, General Secretary and Treasurer of said association; Reuel C. Robertson, Thorwald Larsen and Lawrence W. Nelson, being all of the defendants in this cause, do hereby amend the Notice of Appeal filed September 9, 1958 and hereby appeal to the United States Court of Appeals for the Seventh Circuit from the following orders of the United States District Court:

1. The restraining order of August 20, 1958, and the orders of August 22, 1958 and August 27, 1958, extending the order of August 20, 1958.

2. That portion of the Decree entered September 8, 1958 restraining the defendants from striking until midnight, September 19, 1958.

*Amended Notice of Appeal.*

3. The order of September 8, 1958 entered pursuant to Rule 62(c) of the Federal Rules of Civil Procedure restraining any strike pending determination on appeal.

Alex Elson and Lester P. Schoene,  
*Attorneys for Defendants,*

By Alex Elson,  
*One of Attorneys for Defendants.*

Alex Elson,  
11 S. LaSalle St.,  
Chicago, Ill.,

*Of Counsel:*

Schoene and Kramer,  
1625—K Street, N. W.  
Washington 6, D. C.

United States of America, }  
Northern District of Illinois. } ss.

• • (Caption 58-C-1538) • •

**Certificate of Mailing.**

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on September 10, 1958 in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Messrs. Carl McGowan, Fred C. Steadry,  
Edgar Vanneman, Jr., and R. W. Russell,  
(Attorneys for plaintiff-appellee),  
400 W. Madison Street,  
Chicago 6, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 11th day of September, 1958.

Roy H. Johnson,

*Clerk,*

By Sarah Brown,

*Deputy Clerk.*

(Seal)

IN THE UNITED STATES DISTRICT COURT,  
Northern District of Illinois,  
Eastern Division.

Chicago and North Western Rail-  
way Company, a corporation,  
*Plaintiff,*

*vs.*

The Order of Railroad Telegra-  
phers, a voluntary association;  
James W. Whitehouse, Vice  
President of said association;  
Robert C. Williamson, General  
Chairman of said association;  
J. M. Jenks, General Secretary  
and Treasurer of said associa-  
tion; Reuel C. Robertson, Thor-  
wald Larsen and Lawrence W.  
Nelson, Local Chairmen of said  
association,

*Defendants.*

Civil Action  
No. 58 C 1538.

NOTICE OF APPEAL.

Notice Is Hereby Given that plaintiff Chicago and North Western Railway Company hereby appeals in the above entitled cause to the United States Court of Appeals for the Seventh Circuit, from that part of the decree entered on the 8th day of September, 1958, in the United States District Court, Northern District of Illinois, Eastern Division, which reads and provides as follows:

"It Is Further Ordered that the prayer for injunctive relief extending beyond September 19, 1958, prayed for in the Complaint as Amended be and is hereby denied, and except for the relief hereinabove given, the Complaint as Amended is hereby dismissed."

Carl McGowan,  
Edgar Vanneman, Jr.,  
R. W. Russell,

*Attorneys for Plaintiff.*  
400 W. Madison Street,  
Chicago 6, Illinois.

IN THE UNITED STATES DISTRICT COURT.

• • (Caption 58-C-1538) • •

**ADDRESSES OF DEFENDANTS FOR CLERK OF  
THE DISTRICT COURT FOR MAILING NOTICES  
OF APPEAL.**

Mr. Alex Elson

Mr. Lester P. Schoene,

*Attorneys for the Order of  
Railroad Telegraphers,*

Suite 3400—11 South LaSalle Street,  
Chicago 3, Illinois,

Mr. James W. Whitehouse,

1205 Judson Avenue,  
Evanston, Illinois,

Mr. Robert C. Williamson,

Room 1703—400 West Madison St.,  
Chicago 6, Illinois,

Mr. Reuel C. Robertson,

2694 Joseph Avenue,  
Des Plaines, Illinois,

Mr. Thorwald Larsen,

696 Thacker Street,  
Des Plaines, Illinois,

Mr. Lawrence W. Nelson,

c/o Chicago and North  
Western Railway Company,  
Nelson, Illinois,

Mr. J. M. Jenks,

Room 1703—400 W. Madison Street,  
Chicago 6, Illinois.

United States of America, }  
Northern District of Illinois. } ss.

• (Caption—58-C-1538) • •

### **CERTIFICATE OF MAILING.**

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on September 16, 1958 in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Mr. Alex Elson,  
Mr. Lester P. Schoene,  
Attorneys for the Order of  
Railroad Telegraphers,  
Suite 3400—11 S. La Salle St.,  
Chicago 3, Illinois.

Mr. James W. Whitehouse,  
1205 Judson Avenue,  
Evanston, Illinois.

Mr. Robert C. Williamson,  
Room 1703—1400 W. Madison Street,  
Chicago 6, Illinois.

Mr. Renel C. Robertson,  
2694 Joseph Avenue,  
Des Plaines, Illinois.

Mr. Thorwald Larsen,  
696 Thacker Street,  
Des Plaines, Illinois.

Mr. Lawrence W. Nelson,  
c/o Chicago and North Western Ry. Co.,  
Nelson, Illinois.

Mr. J. M. Jenks,  
400 W. Madison St. (Room 1703),  
Chicago 6, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 16th day of Séptembe-, 1958. •

Roy H. Johnson,  
*Clerk.*

By Sarah Brown,  
*Deputy Clerk.*

(Seal)

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1538) • •

Transcript of proceedings had in the above-entitled case before Hon. J. Sam Perry, one of the Judges of said Court, in his courtroom in the United States Court House, Chicago, Illinois, on Tuesday, September 16, 1958, at 10:00 o'clock, a.m.

The Court: Gentlemen, I am fully cognizant of the inconsistency of this order with my original order, and I want it clearly understood that I am acting solely under the rules and not on the merits of the case in this matter. I want that clearly understood.

I have given it further consideration and I am in whole-hearted agreement with Mr. Elson here that the two cases we have here, the Chicago River case, are not authority for me to act in this matter for the reason that in those instances the Court held that the Act didn't apply. Now, I have held, in effect, that the Act does apply. But I have given a lot of further consideration to it in this respect: No matter what the circumstances here, a state

court could have no jurisdiction because the field has been preempted by the Railway Labor Act, in my judgment. Therefore, no state court having any remedy whatsoever, the only remedy that could lie would be in this court.

In view of the fact that the court has said in several of those cases, including the River case, that the LaGuardia Act must be read and interpreted along with the Railway Labor Act in dealing with railway labor problems, I know of no place, no court that could have jurisdiction, except this one.

The Court: Well, gentlemen, I am going to sign the order as presented and I will not make any attempt to limit the time. However, I am going to add this paragraph:

"The Court respectfully suggests that the parties join herein to expedite the appeal herein because of the unusual legal, economic, and social problems involved." That is my viewpoint, and if the case were before me, I would do everything possible, as I have done I believe in this case, to expedite a hearing. This is the kind of a case that should have right of way. The statutes say that it should have the right of way in this Court and that will be the order. I am concerned. I don't want to exceed my jurisdiction, but I believe interpretation of the law gives me and imposes upon me the duty to act in this particular case. But I would like very much to have that reviewed, even if possible before the main point of the controversy is reviewed. I just like to know that I am acting within the realm of my jurisdiction. That is the order.

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1538) • •

**ORDER.**

This matter having come on for a hearing upon plaintiff's motion for an injunction pending on appeal, and the plaintiff having duly filed a Notice of Appeal and Cost Bond, and the Court being advised in the premises,

It is hereby Ordered that an injunction issue under Rule 62(c) and accordingly it is Further Ordered that until the Court of Appeals of the Seventh Circuit decides plaintiff's appeal herein, the defendants, members of defendants' organization and its officers, their agents, servants, employees and attorneys, and all employees of plaintiff and any other persons in active concert and participation with them represented by the defendants, be and they hereby are restrained from ordering, authorizing, encouraging, inducing, approving, continuing, starting or permitting any strike on plaintiff's railroad.

It is Further Ordered that the Bond heretofore filed by plaintiff on September 9, 1958 remain in full force and effect as the Bond required by this order.

Nothing herein shall be construed to require an individual employee to render labor or service without his consent, nor shall anything herein be construed to make the quitting of his job by any individual employee an illegal act.

This Court respectfully suggests that the parties join herein to expedite the appeals herein because of the unusual legal, economic and social problem involved herein.

Enter:

J. S. Perry,

*United States District Judge.*

Dated: September 16, 1958,  
Chicago, Illinois.

IN THE UNITED STATES DISTRICT COURT.

Northern District of Illinois

Eastern Division

Chicago and North Western Rail-  
way Company, a corporation,

*Plaintiff,*

*vs.*

The Order of Railroad Telegra-  
phers, et al.,

*Defendants.*

Civil Action

No. 58 C 1538

Equitable Relief  
Demanded

## SECOND AMENDED NOTICE OF APPEAL.

Notice is hereby given that The Order of Railroad Telegraphers, a voluntary association; James W. Whitehouse, Vice President of said association; Robert C. Williamson, General Chairman of said association; J. M. Jenks, General Secretary and Treasurer of said association; Renel C. Robertson, Thorwald Larsen and Lawrence W. Nelson, being all of the defendants in this cause, do hereby again amend the Notice of Appeal filed September 9, 1958 and hereby appeal to the United States Court of Appeals for the Seventh Circuit from the following orders of the United States District Court:

1. The restraining order of August 20, 1958, and the orders of August 22, 1958, August 27, 1958 and September 5, 1958, extending the order of August 20, 1958.

2. That portion of the Decree entered September 8, 1958 restraining the defendants from striking until midnight, September 19, 1958.

3. The order of September 16, 1958 entered pursuant to Rule 62(c) of the Federal Rules of Civil Procedure restraining any strike pending determination on appeal.

*Alex Elson and Lester P. Schoene,  
Attorneys for Defendants.*

*By Alex Elson,  
One of Attorneys for Defendants.*

Dated: September 16, 1958.

Alex Elson,  
11 S. LaSalle St.  
Chicago, Ill.

Of Counsel:

Schoene and Kramer,  
1625—K Street, N. W.,  
Washington 6, D. C.

United States of America, }  
Northern District of Illinois. } ss.

• • (Caption—58-C-1538) • •

### **CERTIFICATE OF MAILING.**

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on September 16, 1958 in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Messrs. Carl McGowan  
Fred O. Steadry  
Edgar Vanneman, Jr.  
R. W. Russell

Attorneys for Plaintiff  
c/o Law Department  
Chicago and North Western Ry. Co.  
400 W. Madison Street  
Chicago 6, Illinois

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 16th day of September, 1958.

Roy H. Johnson,  
Clerk.

By Sarah Brown,  
Deputy Clerk.

(Seal)

United States of America,  
Northern District of Illinois. } ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that the annexed and foregoing are the original papers constituting the Record on Appeal in the case of Chicago and North Western Railway Company Plaintiff-Appellee vs. The Order of Railroad Telegraphers, et al. No. 58 C 1538 Defendants-Appellants as follows:

Verified Complaint—filed August 20, 1958

Temporary Restraining Order entered August 20, 1958

Order entered on August 22, 1958 continuing the Temporary Restraining Order entered on August 20, 1958, until August 28, 1958

Amendment to Complaint—filed August 22, 1958 (a copy certified to by Judge Perry to be correct copy of original)

Answer to Complaint—filed August 25, 1958

Answer to Amendment to Complaint—filed August 25, 1958

Order entered August 27, 1958 continuing the temporary restraining order entered on August 20, 1958 until September 6, 1958

Findings of Fact and Conclusions of Law entered on September 8, 1958

Decree entered September 8, 1958 restraining defendants from striking until September 19, 1958 at midnight

Order entered on September 8, 1958 granting an injunction pending appeal under Rule 62(c)

Order entered on September 5, 1958 continuing restraining order

Notice of Appeal filed by defendants on September 8, 1958

Amended Notice of Appeal—filed by defendants on September 10, 1958

*Clerk's Certificate.*

Appellants' designation of portions of Record on Appeal, pursuant to Rule 12(g) of the Rules of the United States Court of Appeals for the Seventh Circuit—filed September 10, 1958

Motion of defendants to dismiss appeal from order of September 8, 1958 granting injunction under Rule 62(c) and to vacate said injunction order—filed September 12, 1958

Order entered September 12, 1958, vacating order entered on September 8, 1958 enjoining defendants under Rule 62(c), and dismissing that portion of defendants' appeal relating to the aforesaid Rule 62(c) injunction order, without prejudice to the appeal taken from the other orders appealed from in the Amended Notice of Appeal filed September 10, 1958

Notice of Appeal filed September 16, 1958 by plaintiff  
Order entered September 16, 1958 that injunction issue under Rule 62(c), etc.

Second Amended Notice of Appeal filed by defendants on September 16, 1958

Appellants' additional designation of portions of record on appeal pursuant to Rule 12(g)—filed September 18, 1958

filed and entered among the records of the Said Court in my office on the dates indicated.

In testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 16th day of September, 1958.

Roy H. Johnson,  
*Clerk.*

By Sarah Brown,  
*Deputy Clerk.*

(Seal)

[fol. 377]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1958—JANUARY SESSION, 1959.

No. 12435

CHICAGO AND NORTH-WESTERN RAILWAY COMPANY,  
a corporation, Plaintiff-Appellee,

v.

THE ORDER OF RAILROAD TELEGRAPHERS, a voluntary  
association, et al., Defendants-Appellants.

No. 12455

CHICAGO AND NORTH WESTERN RAILWAY COMPANY,  
a corporation, Plaintiff-Appellant,

v.

THE ORDER OF RAILROAD TELEGRAPHERS, a voluntary  
association, et al., Defendants-Appellees.

Appeals from the United States District Court  
for the Northern District of Illinois,  
Eastern Division.

OPINION—March 13, 1959

Before DUFFY, *Chief Judge*, and PARKINSON and KNOCH,  
*Circuit Judges*.

KNOCH, *Circuit Judge*: These two appeals arise out of the same proceeding below, and, by agreement of the parties, were heard together by this Court. In No. 12435, the defendants-appellants, hereinafter referred to as the "Union," have appealed from an order of the District [fol. 378] Court entered on August 20, 1958, restraining the Union from striking; the orders of August 22 and 27, 1958,

extending the restraining order of August 20, 1958; that portion of the decree entered September 8, 1958, restraining the defendants from striking until midnight, September 19, 1958; and the order of September 16, 1958, entered pursuant to Rule 62 (c) of the Federal Rules of Civil Procedure, 28 U. S. C. A., restraining any strike pending appeal. In No. 12455, the plaintiff-appellant, hereinafter referred to as "North Western," has appealed from that portion of the September 8, 1958 decree denying any injunctive relief beyond September 19, 1958, and dismissing its complaint.

The contested issues are set forth with many variations by the parties. However, our decision that North Western is entitled to a permanent injunction is dispositive of the entire matter. The controlling issue may be stated simply as follows:

May the employees of North Western, represented by the Union, lawfully strike to enforce a demand that positions held by such employees on December 3, 1957, shall be abolished only by agreement between North Western and the Union?

The facts are that North Western's stations, laid out a short distance apart many years ago to accommodate the horse-drawn vehicles of that day, have been so affected by the changes in transportation, including the hard roads, telephone and automobile, that many station agents were receiving a full day's pay for twelve to thirty minutes' work, although North Western was in serious need of funds to raise its service and equipment to a level at which it could compete not only with other railroads but with all other modern forms of transportation.

As a part of a modernization program to meet competition, North Western formulated its "Central Agency Plan," under which the service area of certain station agents was extended to include a neighboring station or stations without any curtailment of service to shippers.

North Western filed petitions for authority to effectuate the Central Agency Plan with the public utilities commissions of South Dakota, Iowa, Minnesota and Wisconsin. In

[fol.379] South Dakota, the Public Utilities Commission held hearings at various points throughout the State over a period of about two months. The Union appeared in the proceedings to protest the granting of the authority sought; presented evidence; participated in filing briefs with, and in oral argument before, the Commission. The Commission found that the Central Agency Plan was required in the public interest, granted North Western the authority sought, and directed the Plan be made effective forthwith. The same procedure was followed in Iowa with a similar authorization granted by the Iowa State Commerce Commission. Hearings have been held before the Minnesota and Wisconsin Commissions, but determinations are still awaited.

In the Commission proceedings, the Union took the position that the Central Agency Plan could not be put into effect without agreement of the Union under the existing collective bargaining contracts. However, a few weeks after North Western filed its first petition in South Dakota, the Union sent North Western letters under Section 6 of the Railway Labor Act (45 U. S. C. A. Sec. 151, *et seq.*) requesting that the existing collective bargaining agreements be amended by adding the following provision:

"No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the Carrier and the Organization."

North Western informed the Union that it did not consider this proposal for a change in the contracts to be legally within the scope of Sec. 6 of the Railway Labor Act. Thereafter the Union invoked mediation under the Act. The National Mediation Board began mediation proceedings. The Board, on May 27, 1958, requested the parties to arbitrate. On May 28, 1958, the Union declined, and, on June 12, 1958, North Western declined. On June 16, 1958, the Board closed its files.

The Board Chairman and Chief Executive Officer of North Western indicated a willingness to discuss means of cushioning the economic impact of abolition of positions, as had been undertaken in a supplemental Unemployment

Benefits Agreement with most of the other non-operating railroad unions who had been affected by reductions in force. North Western's Chairman expressed a continuing [fol. 380] willingness to discuss that type of agreement, including such matters as severance pay, transition of employees from non-productive to productive employment and the like. The Union's President expressed an opinion that the Agreement was inadequate, but offered no proposals for alteration in its terms. The Union offered no modification or reduction in its proposed change to the existing contract.

North Western received notice, on August 14, 1958, of a threatened strike by the Union from the National Mediation Board. The Board offered its mediation services in the dispute. Both parties accepted and the case was docketed.

On August 18, 1958, the Union issued a strike call to its members for 6 o'clock A.M. on August 21, 1958, which read in part:

**"The Issues.**

"On July 10, 1957, we submitted to the membership on the Chicago & North Western System a strike ballot seeking the views of the membership as to whether a strike should be authorized if necessary to secure a satisfactory settlement of the dispute arising from our proposal to add to existing agreements the following rule:

'No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the Carrier and the Organization.'

"In the circular we summarized the circumstances giving rise to the urgent need for such a rule. We pointed out the general onslaught of this Carrier on the employment of the people we represent, and particularly the system-wide, wholesale elimination of agency positions and enlargement of assignments of the remaining agents. We recited the brutal conduct of the carrier in South Dakota in abolishing 53 positions and enlarging the assignments of 16 others, all in one day, before we even had notice of the Order of the South Dakota Commission under which the Carrier purported to act. We also told you of our strenu-

ous, patient, but futile efforts to correct the situation under the Railway Labor Act and in the Courts.

"The need for the proposed rule has again been tragically demonstrated in the last few days. What [fol. 381] happened in South Dakota was repeated in Iowa, except that this time 70 positions were abolished and 27 assignments enlarged.

"The vote on the strike ballot was almost unanimous in favor of a strike. The time has come to act in accordance with that vote."

On August 19, 1958, Mediator Wallace Rupp came to North Western. He talked with North Western's Director of Personnel. The latter suggested that, without prejudice to North Western's position regarding the illegality of the proposed contract change, "... there was a possibility of settling the entire question involving the proposed rule on the railroad by working out an arrangement for limiting the number of lay-offs per year to an agreed upon percentage of the total number of jobs of the [Union], over and above the reduction in the number of such employees by attrition." Rupp left to talk with representatives of the Union with the understanding that if they were interested in the Director's proposal, he would call him the following morning. Rupp did not call. The Board closed its file on August 20, 1958, stating its services continued available if desired.

North Western then filed this action in injunction. The District Court issued a temporary restraining order which was continued through the hearing on the merits. On September 8, 1958, after hearing the evidence and arguments of counsel, the District Court filed findings of fact and conclusions of law, and entered a decree enjoining the Union from striking until midnight, September 19, 1958, and otherwise dismissing the complaint. The District Court then entered an order restraining the Union from striking pending appeal. These appeals followed.

The Norris-LaGuardia Act, (29 U. S. C. A. Sec. 101, *et seq.*) prohibits any court of the United States from issuing an injunction in any case involving a "labor dispute," and in Sec. 113(c), the term "labor dispute" is defined as

"any controversy concerning terms or conditions of employment."

The Railway Labor Act (45 U. S. C. A. Sec. 151, *et seq.*) provides for a thirty-day written notice (Sec. 156) to be given by any party who wishes to change an agreement [fol. 382] "affecting rates of pay, rules, or working conditions." This is commonly known as the "Section 6 Notice." Thus where a Section 6 Notice dealing with one of the enumerated subjects is given by a union to a carrier, a "labor dispute" within the meaning of the Norris-LaGuardia Act has arisen. Conversely, where the Section 6 Notice does not pertain to "rates of pay, rules, or working conditions," there is no "labor dispute," and the provisions of the Norris-LaGuardia Act with reference to injunctions are not applicable.

It is perhaps true that any demand a union might make, no matter how frivolous or unlawful, could, by some stretch of the imagination, be contended to affect "rates of pay, rules, or working conditions." However, the Supreme Court has pointed out that not all demands, by either labor or management, are within the scope of the Railway Labor Act, and hence the insistence upon their inclusion within a labor agreement does not give rise to a "labor dispute." Or, as it is more commonly put, the demand is not within the scope of mandatory bargaining. *Labor Board v. Borg-Warner Corp.*, 1957, 356 U.S. 342, 349. Accordingly, the issue here is whether the Union's demand falls within the scope of mandatory bargaining. If it does not, the injunction may and should issue.

Certainly the Railway Labor Act does not divest a carrier of the right to manage and control the administrative functions of its business enterprise and conduct its business operations without exercise of a veto power by the Union. Here the Union is demanding such veto power over the abolition of any position in existence on December 3, 1957. The Union is thus attempting to attain, through the collective bargaining processes of the Railway Labor Act, that which would prohibit North Western from complying with the orders of the South Dakota Public Utilities Commission and the Iowa State Commerce Commission.

In short, this is an attempt by the Union to arrogate to itself the prerogatives that have been traditionally and rightfully management's, while, at the same time, assuming none of the corresponding burdens and responsibilities.

North Western must, as the record clearly shows, adapt itself to ever-changing technological developments, and [fol. 383] must be ready, at all times, to meet the demands of competition in all fields of transportation by every legitimate means.

It appears clear that the effect of the Union's proposal, if accepted, would place in its hands the power to prevent any undertaking by North Western to meet competition by modernizing its operations in the light of technological development, and fulfilling its obligation of operating efficiently and economically for the benefit of itself, its employees, and the public. Ultimately the Union could even bring about a situation where the railroad itself might be forced out of business or so crippled financially that all employees, including the Union's members, would suffer. This contract proposal, if accepted, would enable the Union to control the pace of North Western's compliance with the Commission orders aforesaid. The Union points to existing contracts in the railroad industry relating to stabilization of employment. These are described as dealing with severance allowance, supplementary unemployment compensation benefits and guaranteed employment. They do not vest indefinite retroactive veto power over abolition of positions and are expressly limited to prospective periods of short duration. The existing agreement between North Western and the Union states no expiration date and may be changed only by mutual agreement. North Western asserts that it "... remains ready to negotiate on any proposals comprehending financial benefits for job displacement or for otherwise cushioning the impact of the Central Agency Plan. It cannot agree to recognize the propriety of a separate demand which would displace Congress, the Interstate Commerce Commission, state regulatory commissions, and management, from the determination of the positions which must be maintained by the carrier from the standpoint of efficiency and economy."

In any event, the fact that other carriers may have sub-

mitted to unlawful demands does not change the character of such demands. A carrier may not escape its obligations by bargaining them away. The Commission orders may not be circumvented by a contract entered into by a carrier and a union under threat of strike.

In *Brotherhood of Railroad Trainmen, et al. v. Howard, et al.*, 1952, 343 U.S. 768, where the Supreme Court found [fol. 384] that the dispute, as here, involved the validity of the contract, the Court concluded that the District Court had jurisdiction and power to issue necessary injunctive orders notwithstanding the provisions of the Norris-LaGuardia Act. (p. 774).

In that case, by threat of strike, an exclusively "white" union secured a contract with a railway company not to permit negroes (hired as "train porters" because not eligible to join the contracting union) to perform duties of brakemen, as a result of which the railway company took steps to discharge the negro "train porters" who had been performing the duties of brakemen in order to replace them with members of the contracting "white" union.

To the same effect were *Graham, et al. v. Brotherhood of Locomotive Firemen and Enginemen*, 1949, 338 U.S. 232; *Steele v. Louisville and Nashville Railroad Co.*, 1944, 323 U.S. 192; and *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 1944, 323 U.S. 210.

The Union attempts to distinguish these cases as involving a demand to bargain a patently immoral and unlawful contract provision. The provision here proposed is characterized by the Union as relating to stabilization of employment—a lawful purpose. However, "stabilization of employment" is a broad term which may, with equal justice, be applied to the aims of the unions concerned in the above cited cases. We see no material difference between the *Howard* case and the case before us.

The proposed contract change in the case before us represents an attempt to usurp legitimate managerial prerogative in the exercise of business judgment with respect to the most economical and efficient conduct of its operations. It is perhaps significant that on oral argument, counsel for the Union expressed the opinion that a demand for veto over discontinuing trains, while less reasonable than

that proposed here, would constitute a bargainable issue under the Railway Labor Act.

The Court of Appeals for the Sixth Circuit was faced with an issue similar to the one before this Court in *Brotherhood of Railroad Trainmen, et al. v. The New York Central Railroad Co.*, 6 Cir., 1957, 246 F. 2d 114, cert. den. 355 U.S. 877. There the union threatened to strike if the [fol. 385] New York Central Railroad closed its Toledo, Ohio yards. The Court held that no labor dispute existed within the meaning of the Norris-LaGuardia Act and that the injunction should issue. While it is true that the union in that case gave no Section 6 notice, we fail to see how such failure distinguishes the rationale of that case from the one here. We agree with the Sixth Circuit, which held (p. 122):

"A railroad strike involving a controversy which does not constitute a labor dispute, may be, and properly is, enjoined upon a showing that it will interfere with interstate commerce and result in irreparable injury to the public and to the railroad."

We, therefore, hold that such a demand as here made by the Union is completely outside the ambit of "rates of pay, rules and working conditions," as those words are used in the Railway Labor Act, *In re Chicago North Shore and M. R. Co.*, 7 Cir., 1945, 147 F. 2d 723, 727, cert. den. 325 U.S. 852; and hence is not within the scope of mandatory bargaining. Therefore, the terms of the Norris-LaGuardia Act are here inapplicable.

The District Court's finding that the proposed contract change related to "rates of pay, rules and working conditions," and was thus a bargainable issue under the Railway Labor Act, is clearly erroneous.

The judgment of the District Court denying injunctive relief beyond September 19, 1958, and dismissing the complaint is reversed and cause remanded for entry of a permanent injunction as prayed by North Western.

[fol. 387]

IN UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Before Hon. F. Ryan Duffy, Chief Judge; Hon. W.  
Lynn Parkinson, Circuit Judge; Hon. Win G. Knoch, Circuit  
Judge.

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No. 12435

CHICAGO AND NORTH WESTERN RAILWAY Co., a corp.,  
Plaintiff-Appellee,

vs.

THE ORDER OF RAILROAD TELEGRAPHERS, a voluntary assoc.,  
et al., Defendants-Appellants:

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No. 12455

CHICAGO AND NORTH WESTERN RAILWAY Co., a corp.,  
Plaintiff-Appellant,

vs.

ORDER OF RAILROAD TELEGRAPHERS, etc., et al.

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Appeal from the United States District Court  
for the Northern District of Illinois,  
Eastern Division.

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JUDGMENT—March 13, 1959

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court, denying injunctive relief beyond September 19, 1958, and dismissing the complaint be, and the same is hereby, Reversed, and that

this cause be, and the same is hereby Remanded for entry of a permanent injunction as prayed by Chicago & Northwestern Railway Co., in accordance with the opinion of this Court filed this day.

It is further ordered and adjudged by this Court that the costs on these appeals be taxed against the Order of Railroad Telegraphers, et. al.

[fol. 389] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 391]

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SUPREME COURT OF THE UNITED STATES

No. 100, October Term, 1959

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THE ORDER OF RAILROAD TELEGRAPHERS, etc., et al.,  
Petitioners,

vs.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY,  
a corporation.

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ORDER ALLOWING CERTIORARI—October 12, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.